No. 16-1466

IN THE

Supreme Court of the United States

MARK JANUS,

Petitioner,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 6, 2017
CERTIORARI GRANTED SEPTEMBER 28, 2017

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Order of the U.S District Court for the Northern District of Illinois (9/13/16)..... 18a

Plaintiffs' Second Amended Complaint (7/27/16) 40a

AFSCME Notice to all Nonmember Fair Share Fee Payors..... 45a

Illinois Public Labor Relations Act (Relevant Provisions) 48a

U.S. DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

Civil Docket for Case # 1:15-cv-01235

MARK JANUS, ET AL.;
formerly BRUCE RAUNER,

v.

AFSCME, COUNCIL 31, ET AL.

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
02/09/2015	1	COMPLAINT for Declaratory Judgment filed by Bruce Rauner; Filing fee $ 400, receipt number 0752-10326844.(Murashko, Dennis)
02/09/2015		CASE ASSIGNED to the Honorable Robert W. Gettleman. Designated as Magistrate Judge the Honorable Daniel G. Martin.
		* * *
03/05/2015	40	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, Lack of Federal Subject Matter Jurisdiction, and Lack of Standing (Yokich, Stephen) (Modified by the Clerk's Office on 3/6/2015)
		* * *
06/05/2015	42	MEMORANDUM by American Federation of State, County and Municipal Employees, Council 31,

DATE	NO.	DOCKET TEXT
		AFL-CIO, Conservation Police Lodge, IL PBPA, General Teamsters, Professional & Technical Employees Local Union No. 916, IL Fraternal Order of Police - Labor Council, Illinois Federation of Teachers, AFL-CIO Local #919, Illinois Nurses Association, Illinois State Bricklayers and Allied Craftworkers, International Association of Machinist and Aerospace Workers, International Brotherhood of Electrical Workers, International Federation of Public Employees, Local 4408, AFT/IFT, International Union of Bakery, Confectionery and Tobacco Workers, International Union of Operating Engineers, International Union of Painters and Allied Trades, International Union of United Food and Commercial Workers, Laborers International Union of North America, Laborers International Union of North America-Illinois State Employees Association, Local #330, General Chauffeurs, Sales Drivers and Helpers (Fox Valley) Including Teamsters Local 705, Local 2002 and the Southern and Central Illinois Laborers' District Council, Service Employees International Union, Local 1, Fireman and Oilers Division, Service Employees

DATE	NO.	DOCKET TEXT
		International Union, Local 73, Teamsters Downstate Illinois State Employee Negotiating Committee, Teamsters Local 700, Affiliated With the International Brotherhood of Teamsters Cook County, Troopers Lodge No. 41, FOP, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of U.S.A. and Canada, United Brotherhood of Carpenters and Joiners of America in support of Motion to Dismiss for Failure to State a Claim 40 (Yokich, Stephen)
		* * *
03/09/2015	51	MOTION by Intervenor People Of The State Of Illinois to intervene
		* * *
03/10/2015	53	MINUTE entry before the Honorable Robert W. Gettleman: Motion hearing held on 2/10/2015. Motion to intervene 51 is granted. Response to motion to dismiss is due by 3/31/2015. Replies are due by 4/14/2015. Briefs are to be confined to jurisdiction and standing and abstention issues and are to be limited to 30 pages. Status hearing is set for 5/14/2015 at 9:30 a.m. Mailed notice (gds)

DATE	NO.	DOCKET TEXT
03/10/2015	54	MOTION by proposed People Of The State Of Illinois to dismiss Plaintiffs' Action (Huszagh, Richard) 06/15/2010 30 MOTION by Defendant SEIU Healthcare Illinois & Indiana to dismiss—Defendants Consolidated Motions to Dismiss (Kronland, Scott).
03/10/2015	55	MEMORANDUM by People Of The State Of Illinois in support of motion to dismiss 54 (Huszagh, Richard)
		* * *
03/23/2015	91	MOTION by Intervenor Parties Brian Trygg, Mark Janus, Marie Quigley to intervene (Torres, Joseph).
03/23/2015	92	MEMORANDUM by Mark Janus, Marie Quigley, Brian Trygg in support of motion to intervene 91 (Attachments: # 1 Index of Exhibits to Memorandum in Support of Motion to Intervene, # 2 Exhibit A-Complaint, # 3 Index of Exhibits to Complaint, # 4 Exhibit 1-3, # 5 Exhibit B, # 6 Exhibit C, # 7 Exhibit D) (Torres, Joseph)
		* * *
03/26/2015	96	FIRST AMENDED complaint by Bruce Rauner, Brian Trygg, Mark Janus, Marie Quigley against American Federation of State, County and Municipal Employees,

DATE	NO.	DOCKET TEXT
		Council 31, AFL-CIO, Conservation Police Lodge, IL PBPA, General Teamsters, Professional & Technical Employees Local Union No. 916, IL Fraternal Order of Police - Labor Council, Illinois Federation of Public Employees, Local 4408, AFT/IFT, Illinois Federation of Teachers, AFL-CIO Local #919, Illinois Nurses Association, Illinois State Bricklayers and Allied Craftworkers, International Association of Machinist and Aerospace Workers, International Association of Sheet Metal, Air, Rail, & Transportation Workers (SMART), International Brotherhood of Boiler Makers-Iron Shipbuilders, Blacksmiths, Forgers, and Helpers, International Brotherhood of Electrical Workers, International Union of Bakery, Confectionery and Tobacco Workers, International Union of Operating Engineers, International Union of Painters and Allied Trades, International Union of United Food and Commercial Workers, Laborers International Union of North America, Laborers International Union of North America-Illinois State Employees Association, Local #330, General Chauffeurs, Sales Drivers and Helpers (Fox Valley) Including Teamsters Local 705,

DATE	NO.	DOCKET TEXT
		Local 2002 and the Southern and Central Illinois Laborers' District Council, Metropolitan Alliance of Police, Chapter 294, People Of The State Of Illinois, Service Employees International Union, Local 1, Fireman and Oilers Division, Service Employees International Union, Local 73, Teamsters Downstate Illinois State Employee Negotiating Committee, Teamsters Local 700, Affiliated With the International Brotherhood of Teamsters Cook County, Troopers Lodge No. 41, FOP, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of U.S.A. and Canada, United Brotherhood of Carpenters and Joiners of America (Attachments: # 1 Exhibit 1 - AFSCME Fair Share Notice, # 2 Exhibit 2 - AFSCME Council 31 Contract, # 3 Exhibit 3 - Teamsters Local 916 Contract, # 4 Exhibit 4 - St. Clair County Complaint)(Ford, Matthew)
03/26/2015	97	MOTION by Plaintiff Bruce Rauner for order confirming Plaintiffs' Amended Complaint (Attachments: # 1 Exhibit 1 - Executive Order 15-13) (Ford, Matthew)

* * *

DATE	NO.	DOCKET TEXT
03/26/2015	99	MOTION by Plaintiff Bruce Rauner to dismiss as moot the Defendants' motions to dismiss (Ford, Matthew)
		* * *
03/27/2015	102	REVISED CAPTION OF FIRST AMENDED complaint by Marie Quigley, Bruce Rauner, Brian Trygg, Mark Janus against American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, Conservation Police Lodge, IL PBPA, General Teamsters, Professional & Technical Employees Local Union No. 916, IL Fraternal Order of Police - Labor Council, Illinois Federation of Public Employees, Local 4408, AFT/IFT, Illinois Federation of Teachers, AFL-CIO Local #919, Illinois Nurses Association, Illinois State Bricklayers and Allied Craftworkers, International Association of Machinist and Aerospace Workers, International Association of Sheet Metal, Air, Rail, & Transportation Workers (SMART), International Brotherhood of Boiler Makers-Iron Shipbuilders, Blacksmiths, Forgers, and Helpers, International Brotherhood of Electrical Workers, International Union of Bakery, Confectionery and Tobacco Workers, International Union of Operating

DATE	NO.	DOCKET TEXT
		Engineers, International Union of Painters and Allied Trades, International Union of United Food and Commercial Workers, Laborers International Union of North America, Laborers International Union of North America-Illinois State Employees Association, Local #330, General Chauffeurs, Sales Drivers and Helpers (Fox Valley) Including Teamsters Local 705, Local 2002 and the Southern and Central Illinois Laborers' District Council, Lisa Madigan, Metropolitan Alliance of Police, Chapter 294, People Of The State Of Illinois, Service Employees International Union, Local 1, Fireman and Oilers Division, Service Employees International Union, Local 73, Teamsters Downstate Illinois State Employee Negotiating Committee, Teamsters Local 700, Affiliated With the International Brotherhood of Teamsters Cook County, Troopers Lodge No. 41, FOP, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of U.S.A. and Canada, United Brotherhood of Carpenters and Joiners of America (REVISED CAPTION OF FIRST AMENDED COMPLAINT)
		* * *

DATE	NO.	DOCKET TEXT
04/02/2015	106	ORDER signed by the Honorable Robert W. Gettleman on 4/2/2015: Motion hearing held on 4/2/2015. Plaintiff's motion 103 for leave to file additional appearances of counsel is granted. Plaintiff and Employees' Supplemental briefs are due by 4/16/2015 and may be in excess of 15 but not more than 25 pages. Defendants and Attorney General's replies are due by 4/30/2015. Mailed notice (gds) 08/12/2010 40 RESPONSE by Pat Quinn, SEIU Healthcare Illinois & Indiana in Support of MOTION by Defendant SEIU Healthcare Illinois & Indiana to dismiss—Defendants Consolidated Motions To Dismiss 30 SEIU HCII's & Governor Pat Quinn's Response To Pls' Citation of Supplemental Authority (Kronland, Scott).
		* * *
04/16/2015	109	Employee Plaintiffs' Supplemental Memorandum of Law by Mark Janus, Marie Quigley, Brian Trygg regarding Order of 4/2/2015 106 (Torres, Joseph)
		* * *
04/16/2015	111	MEMORANDUM by Bruce Rauner in Support of Motion for an Order Confirming Plaintiffs' Amended

DATE	NO.	DOCKET TEXT
		Complaint 97 and in Opposition to Motions to Dismiss 40 , 54 (Attachments: # 1 Exhibit 1 - Executive Order 15-13) (Ford, Matthew)
		* * *
04/30/2015	114	MEMORANDUM by People of the State of Illinois in Opposition to motion for order 97, motion to intervene 91 (Rees, R.)
04/30/2015	115	REPLY by Defendants American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, Conservation Police Lodge, IL PBPA, General Teamsters, Professional & Technical Employees Local Union No. 916, IL Fraternal Order of Police - Labor Council, Illinois Federation of Public Employees, Local 4408, AFT/IFT, Illinois Federation of Teachers, AFL-CIO Local #919, Illinois Nurses Association, Illinois State Bricklayers and Allied Craftworkers, International Association of Machinist and Aerospace Workers, International Association of Sheet Metal, Air, Rail, & Transportation Workers (SMART), International Brotherhood of Electrical Workers, International Union of Bakery, Confectionery and Tobacco Workers, International Union of Operating

DATE	NO.	DOCKET TEXT
		Engineers, International Union of Painters and Allied Trades, International Union of United Food and Commercial Workers, Laborers International Union of North America, Laborers International Union of North America-Illinois State Employees Association, Local #330, General Chauffeurs, Sales Drivers and Helpers (Fox Valley) Including Teamsters Local 705, Local 2002 and the Southern and Central Illinois Laborers' District Council, Metropolitan Alliance of Police, Chapter 294, Service Employees International Union, Local 1, Fireman and Oilers Division, Service Employees International Union, Local 73, Teamsters Downstate Illinois State Employee Negotiating Committee, Teamsters Local 700, Affiliated With the International Brotherhood of Teamsters Cook County, Troopers Lodge No. 41, FOP, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of U.S.A. and Canada, United Brotherhood of Carpenters and Joiners of America to Motion to Dismiss for Failure to State a Claim 40 Union Defendant's Joint Reply in Support of Motion to Dismiss and Supplemental

DATE	NO.	DOCKET TEXT
		Memorandum of Law Pursuant to Court Order of April 2, 2015 (Yokich, Stephen)
05/19/2015	116	Memorandum Opinion and Order signed by the Honorable Robert W. Gettleman.
05/19/2017	117	ORDER Motion 91 to file complaint in intervention is granted and the complaint will be treated as the operative complaint in this action. Motions 40 51 to dismiss the original complaint are granted. Plaintiff's motion 97 to confirm the first amended complaint and motion 99 to dismiss defendants' motions as moot are denied. The first amended complaint is dismissed. Plaintiff's motion 83 to place fair share fees in escrow is denied as moot. The remaining defendants response to the new operative complaint is due by 6/10/2015. Signed by the Honorable Robert W. Gettleman on 5/19/2015. Mailed notice. (sj)
05/27/2015	118	MINUTE entry before the Honorable Robert W. Gettleman: Status hearing held on 5/27/2015. Leave is given to file an intervening complaint by 6/1/2015. Status hearing is continued to 6/4/2015 at 10:00 a.m. Mailed notice (gds) (Entered: 05/29/2015)

* * *

DATE	NO.	DOCKET TEXT
06/01/2015	120	First AMENDED complaint by Marie Quigley, Mark Janus, Brian Trygg against All Defendants (Attachments: # 1 Exhibit 1-3) (Torres, Joseph)
		* * *
06/04/2015	122	MINUTE entry before the Honorable Robert W. Gettleman: Status hearing held on 6/4/2015. All defendants' motions to dismiss are due by 7/2/2015. Response is due by 7/30/2015. Replies are due by 8/13/2015. Status hearing set for 9/30/2015 at 09:00 a.m. Mailed notice (gds) (Entered: 06/04/2015)
		* * *
07/02/2015	129	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM(Motion To Dismiss First Amended Complaint of Intervenor-Plaintiffs) (Auerbach, Melissa)
07/02/2015	130	MEMORANDUM in Support of Motion To Dismiss First Amended Complaint of Intervenor-Plaintiffs (Auerbach, Melissa)
07/02/2015	131	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM (Draper, Carl)
07/02/2015	132	MEMORANDUM of law in support of Teamsters' motion to dismiss.

DATE	NO.	DOCKET TEXT
		(Draper, Carl) (Docket text modified by Clerk's Office) (sj,)
07/02/2015	133	MOTION by Intervenor Lisa Madigan, Defendant Tom Tyrrell to stay (Huszagh, Richard)
		* * *
07/06/2015	137	RESPONSE by General Teamsters, Professional & Technical Employees Local Union No. 916 in Support of MOTION by Intervenor Lisa Madigan, Defendant Tom Tyrrell to stay 133 (Draper, Carl) (
		* * *
07/08/2015	139	MINUTE entry before the Honorable Robert W. Gettleman: Motion hearing held on 7/8/2015. Motions to dismiss 54 129 131 are withdrawn without prejudice. Motion to stay 133 is granted to 7/7/2016. Status hearing date of 9/30/2015 is reset to 7/7/2016 at 9:00 a.m. Mailed notice (gds)
		* * *
07/07/2016	144	MINUTE entry before the Honorable Robert W. Gettleman: Status hearing held on 7/7/2016. Plaintiffs are given leave to file an amended complaint. Defendants' motion to dismiss is due by 8/15/2016. Plaintiffs' response is due by 8/30/2016. Defendants' reply is due

DATE	NO.	DOCKET TEXT
		by 9/9/2016. Status hearing set for 11/8/2016 at 9:00 a.m. Mailed notice (gds)
		* * *
07/21/2016	132	SECOND AMENDED complaint by Mark Janus, Brian Trygg against American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, General Teamsters, Professional & Technical Employees Local Union No. 916, Michael Hoffman and terminating Tom Tyrrell (Director of the Illinois Department of Central Management Services, in his official capacity) (Attachments: # 1 Exhibit 1-4) (Torres, Joseph)
		* * *
08/15/2016	146	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, # 3 Exhibit Exhibit 3, # 4 Exhibit Exhibit 4, # 5 Exhibit Exhibit 5, # 6 Exhibit Exhibit 6) (West, John)
08/15/2016	147	MEMORANDUM by American Federation of State, County and Municipal Employees, Council 31, AFL-CIO in support of Motion to Dismiss for Failure to State a Claim 146 (West, John)

DATE	NO.	DOCKET TEXT
08/30/2016	148	RESPONSE by Plaintiffs Mark Janus, Brian Trygg to Motion to Dismiss for Failure to State a Claim 146 (Torres, Joseph)
09/09/2016	149	REPLY by American Federation of State, County and Municipal Employees, Council 31, AFL-CIO to MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 146 on Behalf of All Defendants (West, John)
09/13/2016	132	ORDER signed by the Honorable Robert W. Gettleman on 9/13/2016: Defendants' motion 146 to dismiss is granted. Status hearing date of 11/8/2016 is stricken. Civil case terminated. Mailed notice (gds)

* * *

U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Civil Docket for Case # 16-3638

MARK JANUS AND BRIAN TRYGG,

v.

AFSCME, COUNCIL 31, ET AL.,

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
10/11/2016	1	Private civil case docketed. Fee paid. Docketing statement filed. Transcript information sheet due by 10/25/2016. Appellant's brief due on or before 11/21/2016 for Mark Janus and Brian Trygg
12/13/2016	2	A review of the short record reveals that this appeal involves more than one appellee represented by different counsel. Counsel for appellees are encouraged to file a joint brief and appendix or adopt parts of a co-appellee's brief. The parties are reminded that redundant and uncoordinated briefing will be stricken. See United States v. Torres, 170 F.3d 749 (7th Cir. 1999); United States v. Ashman, 964 F.2d 596 (7th Cir. 1992).

* * *

DATE	NO.	DOCKET TEXT
11/21/2016	9	Submitted appellant brief by William Messenger for Appellants Mark Janus and Brian Trygg.
		* * *
11/22/2016	13	Re-Submitted appellant brief by William Messenger for Appellants Mark Janus and Brian Trygg. [13] [6799510] [16-3638] (Messenger, William)
		* * *
12/21/2016	22	Submitted appellee brief by John M. West for Appellees American Federation of State, County and Municipal Employees, Council 31, General Teamsters, Professional & Technical Employees Local Union No. 916, Michael Hoffman and Lisa Madigan.
		* * *
01/04/2017	26	Submitted appellant reply brief by William Messenger for Appellants Mark Janus and Brian Trygg.
		* * *
02/27/2017	31	Filed Appellee American Federation of State, County and Municipal Employees, Council 31 Citation of Additional Authority, per Circuit Rule 28(e). Argument set for: 03/01/2017.

DATE	NO.	DOCKET TEXT
02/27/2017	32	Filed Appellants Mark Janus and Brian Trygg Citation of Additional Authority, per Circuit Rule 28(e). Argument set for: 03/01/2017.
03/01/2017	33	Case heard and taken under advisement by panel: Richard A. Posner, Circuit Judge; Diane S. Sykes, Circuit Judge and David F. Hamilton, Circuit Judge.
03/01/2017	34	Case argued by Mr. William L. Messenger for Appellants Mark Janus and Brian Trygg, Mr. Carl R. Draper for Appellee General Teamsters, Professional & Technical Employees Local Union No. 916 and Mr. John M. West for Appellee American Federation of State, County and Municipal Employees, Council 31.
03/21/2017	35	Filed opinion of the court by Judge Posner. AFFIRMED. Richard A. Posner, Circuit Judge; Diane S. Sykes, Circuit Judge and David F. Hamilton, Circuit Judge.
03/21/2017	36	ORDER: Final judgment filed per opinion. With costs: yes.
04/12/2017	37	Mandate issued. No record to be returned.
06/09/2017	38	Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. 11-681.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case No. 1:15-CV-01235

BRUCE RAUNER, Governor of the State of Illinois,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, *et al.*,

Defendants.

Judge:
Honorable Robert W. Gettleman

Magistrate Judge:
Honorable Daniel G. Martin

DEFENDANTS' MEMORANDUM IN SUPPORT OF JOINT MOTION TO DISMISS

INTRODUCTION

Illinois law provides that the State's contracts with public-employee unions may include a provision that requires all employees in a bargaining unit to pay their fair share for the costs of the union's collective bargaining representation. The Governor of Illinois seeks a declaration from this Court that these fair-share provisions violate the First Amendment.

As demonstrated below, the Court must dismiss this action for lack of jurisdiction. The Governor's claim does not "aris[e] under" federal law within the meaning of 28 U.S.C. §1331, because the federal question the Governor identifies – whether fair-share fees violate the First Amendment – would be raised only as a defense to a state law proceeding to enforce the fair-share provisions. The Governor also lacks standing to bring this suit in federal court because the state law and state contracts do not affect him in his personal capacity.

Alternatively, the Court should dismiss the complaint for failure to state a claim, because fair-share provisions are a constitutional means of preventing free riding in a system of exclusive representative collective bargaining. "The First Amendment permits the government to require both public sector and private sector employees who do not wish to join a union designated as the exclusive collective-bargaining representative at their unit of employment to pay that union a service fee." *Locke v. Karass*, 555 U.S. 207, 213 (2009) (unanimous decision).

BACKGROUND

The Illinois Public Labor Relations Act ("IPLRA") provides that a labor organization chosen by a majority of public employees in a bargaining unit "is the exclusive representative for the employees of such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours and other conditions of employment." 5 ILCS 315/6(c). A labor organization acting as an exclusive representative is "responsible for representing the interests of all public employees in the unit." 5 ILCS 315/6(d). To help cover the cost of that representation, an exclusive representative "may include in the agreement a provision

requiring employees covered by the agreement who are not members of the organization to pay their proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment." 5 ILCS 315/6(e). The Supreme Court held in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), that such fair-share provisions are consistent with the First Amendment.

When a collective bargaining agreement includes a fair-share provision, the IPLRA requires state agencies to honor that provision. *See* 5 ILCS 315/6(e) ("the proportionate share payment . . . shall be deducted by the employer from the earnings of the nonmember employees and paid to the employee organization"). The IPLRA further provides that the IPLRA and "any collective bargaining agreement negotiated thereunder" shall "prevail and control" over "any . . . executive order or administrative regulation." 5 ILCS 315/15(a).

On February 9, 2015, the Governor of Illinois issued Executive Order 15-13 directing state agencies to disobey the IPLRA by refusing to enforce the fair-share contractual provisions in state employee collective bargaining agreements. *See* Complaint (Doc. 1) ¶¶ 6, 8, 9.[1] That same day, the Governor filed this federal court lawsuit against 28 labor organizations (the "Unions") that represent state employees. *Id.* ¶¶ 18-44. The complaint alleges that the State entered into collective bargaining agreements with the Unions that include fair-share provisions, *id.* ¶ 52, which the

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[1] Executive Order 15-13 is available at www.illinois.gov/Government/ExecOrders/Documents/2015/ExecutiveOrder2015-3.pdf.

Governor acknowledges are valid under the IPLRA, *id.* ¶ 81. The complaint pleads a single cause of action under the Declaratory Judgment Act, *id.* ¶¶ 91-98, and seeks a declaration that "[t]he Fair Share Contract Provisions under the IPLRA are unconstitutional under the First Amendment" and that "Executive Order 15-13 is within the Governor's powers under the Illinois constitution," *id.* at 21.

ARGUMENT

I. The Complaint Must Be Dismissed for Lack of Jurisdiction.

"Federal courts must determine that they have jurisdiction before proceeding to the merits." *Lance v. Coffman*, 549 U.S. 437, 439 (2007). "Without jurisdiction the court cannot proceed at all . . . [and] the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (citation and quotation marks omitted); *see also* Fed. R. Civ. P. 12(h)(3). The plaintiff has the burden of establishing jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

A. The Governor's Claim Does Not "Aris[e] Under" Federal Law.

The Governor's complaint does not fall within the Court's subject-matter jurisdiction. The complaint asserts jurisdiction on the basis of 28 U.S.C. § 1331, which gives the district courts jurisdiction over claims "arising under" federal law, because the Governor alleges that fair-share fees violate the First Amendment. Ordinarily, a claim "arise[s] under" federal law if a federal question appears on the face of the plaintiff's well-pleaded complaint; whereas the existence of a potential federal defense to that complaint "is

inadequate to confer federal jurisdiction." *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 808 (1986). But the test for federal question jurisdiction is reversed in declaratory judgment actions.

The Declaratory Judgment Act "allows a party . . . who expects to eventually be sued, to determine his rights and liabilities without waiting for his adversary, the presumptive plaintiff, to bring suit. That act, however, is not an independent grant of federal subject-matter jurisdiction, so jurisdiction depends upon the nature of the anticipated claims." *DeBartolo v. Healthsouth Corp.*, 569 F.3d 736, 741 (7th Cir. 2009) (citations omitted). "[A]lthough the presence or absence of a federal question normally turns on an examination of the face of the plaintiff's complaint, in an action for declaratory judgment the positions of the parties are reversed: the declaratory-judgment plaintiff would have been the defendant in the anticipated suit whose character determines the district court's jurisdiction." *Id.* This rule stems from *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950), which "has come to stand for the proposition that if, but for the availability of the declaratory judgment procedure, the federal claim would arise only as a defense to a state created action, jurisdiction is lacking." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 16 (1983) (citation, quotation marks omitted).

Thus, "[t]o decide whether a declaratory-judgment action comes within federal jurisdiction" the court must "look at the underlying controversy." *NewPage Wis. Sys. Inc. v. United Steel Workers*, 651 F.3d 775, 777 (7th Cir. 2011). Only "[i]f a well-pleaded complaint by the defendant" – in this case the Unions – "would have arisen under federal law," does the "court ha[ve]

jurisdiction when" the plaintiff – here, the Governor – "brings a declaratory-judgment suit." *Id.* at 777-78.

The only federal issue identified in the Governor's declaratory judgment complaint is whether fair-share fees violate the First Amendment. That First Amendment issue would arise only as a defense to the Unions' hypothetical state law action to enforce the fair-share provisions of their contracts or to set aside the Governor's Executive Order as inconsistent with the IPLRA.

The Unions' hypothetical, well-pleaded claim for breach of contract would not present a federal question. *See Minn. Elevator, Inc. v. Imperial Elevator Servs.*, 758 F. Supp. 2d 533, 537 (N.D. Ill. 2010) (elements of a breach of contract claim under Illinois law). The issue whether provisions of the contract are unconstitutional would be raised, if at all, only as a defense to the state-law breach-of-contract claim. *See Employers Ins. of Wausau v. Titan Int'l, Inc.*, 400 F.3d 486, 900 (7th Cir. 2005) (illegality of the contract is an affirmative defense under Illinois law); *Am. Buyers Club of Mt. Vernon, Ill. Inc. v. Grayling*, 368 N.E.2d 1057, 1059 (5th Dist. 1977); *see also Narkiewicz-Laine v. Scandinavian Airlines Sys.*, 587 F. Supp. 2d 888, 890 (N.D. Ill. 2008) ("Plaintiff brought state-law breach of contract claims. Because the conditions and limits of the Montreal Convention are defenses to the state-law claims raised by plaintiff, they do not provide a basis for federal-question subject matter jurisdiction.").

Nor would a hypothetical, well-pleaded claim by the Unions to set aside the Executive Order as contrary to the IPLRA present a federal question. The IPLRA states on its face that it prevails over executive orders, 5 ILCS 315/15(a), and state statutes are presumed to

be constitutional, *see People v. Garcia*, 770 N.E.2d 208, 209 (Ill. 2002). An argument that the fair-share provisions of the IPLRA are not valid would be raised, if at all, only as a defense to the Unions' claim. *See, e.g., In re Marriage of Miller*, 879 N.E.2d 292, 296 (Ill. 2007) (unconstitutionality of state statute raised as an affirmative defense).

A federal defense does not establish federal-question jurisdiction "even if both parties concede that the federal defense is the only question truly at issue." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). State courts adjudicate constitutional defenses all the time.

Nor is this a case like *Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005), in which the plaintiff's well-pleaded state-law claim necessarily included a federal-law element. Here, the First Amendment issue is purely a defense and, as the Seventh Circuit has explained, *Grable* does not "alter the rule that a potential federal defense is not enough to create federal jurisdiction under §1331." *Chicago Tribune Co. v. Bd. of Trustees of Univ. of Ill.*, 680 F.3d 1001, 1003 (7th Cir. 2012). "*Grable* has nothing to do with using federal defenses to move litigation to federal court. In *Grable* the federal issue was part of the plaintiff's own claim." *Id.*; *see also Illinois v. McGraw-Hill Co.*, 2013 WL 1874279, at *5 (N.D. Ill. May 2, 2013) (remanding for lack of federal question jurisdiction a state law misrepresentation claim and noting that "Defendants' argument that S & P's statements constitute protected speech under the First Amendment is . . . an affirmative defense," "not something that a plaintiff must prove").

B. The Governor Lacks Standing To Challenge the Constitutionality of State Law.

This case must also be dismissed for lack of jurisdiction because the Governor does not have standing to bring an action in federal court challenging the constitutionality of the IPLRA and the fair-share contractual provisions that the IPLRA authorizes.

State officials lack standing to challenge the constitutionality of state law in federal court where the officials are not personally adversely affected – that is, where their interest is official, rather than personal. For example, in *Smith v. Indiana*, 191 U.S. 138 (1903), a county auditor brought an action alleging that a state property tax statute was unconstitutional. The Supreme Court dismissed the appeal, reasoning that

> the jurisdiction of this court . . . can only be invoked by a party having a personal interest in the litigation. It follows that he cannot sue out a writ of error in behalf of third persons. . . . It is evident that the auditor had no personal interest in the litigation. He had certain duties as a public officer to perform. The performance of those duties was of no personal benefit to him. Their nonperformance was equally so. He neither gained nor lost anything by invoking the advice of the supreme court [of Indiana] as to the proper action he should take. He was testing the constitutionality of the law purely in the interest of third persons, viz., the taxpayers. . . . We think the interest of an appellant in this court should be a personal, and not an official, interest.

Id. at 148-49. The Seventh Circuit, in *D'Amico v. Schweiker*, 698 F.2d 903 (7th Cir. 1983), similarly "dismissed for want of standing a suit brought by administrative law judges of the Social Security Administration who were complaining that a directive by their superiors required them to decide social security cases in a manner contrary to law," because "they did not suggest that compliance with the directive would reduce their pay or benefits or increase their work or anything of the sort." *Cronson v. Clark*, 810 F.2d 662, 664 (7th Cir. 1987) (discussing *D'Amico*). *D'Amico* determined that "these administrative law judges . . . are the wrong people to be raising with us the question whether the challenged instruction is lawful." *D'Amico,* 698 F.2d at 906; *see also Finch v. Miss. St. Med. Ass'n,* 585 F.2d 765, 774 (5th Cir. 1978) (Governor of Mississippi lacked standing to challenge constitutionality of state law).

Here, the Governor's complaint does not identify any personal interest in this case sufficient to confer standing. The Governor is not personally subject to a fair-share requirement. Indeed, Governor Rauner is not even a party to the collective bargaining agreements with the defendant Unions; they were entered into by a state agency. *See* Complaint ¶ 14. Nor would the Governor receive any additional money if he prevailed in this litigation. The complaint, instead, alleges that this litigation is an exercise of the Governor's "duty to protect the First Amendment rights . . . of all people in the State of Illinois," and his desire not to "violat[e] his oath of office." Complaint ¶ 84. But those are classic "official[] interest[s]" long held to be insufficient to confer standing. *Smith*, 191 U.S. at 149.

As the Seventh Circuit has made clear, alleged "[i]ndignation that the law is not being obeyed, sympathy for the victims of that disobedience, a passionate desire to do one's legal duty – none of these emotions . . . will support a federal lawsuit." *Cronson*, 810 F.2d at 664; *see also Finch*, 585 F.2d at 774 ("The Governor, as an elected official, is in no danger of expulsion from office as a result of any action that he alone believes may have violated his oath."); *City of S. Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 625 F.2d 231, 235-39 (9th Cir. 1980) (rejecting argument that a state official has standing to challenge state law based merely on duty to follow oath of office); *cf. Bd. of Educ. v. Allen*, 392 U.S. 236, 241 n.5 (1968) (suggesting that school board members had standing to challenge the constitutionality of state law because they faced "expulsion from office and also a reduction in state funds for their school districts" if they refused to comply).

The Governor cannot confer standing upon himself to challenge the constitutionality of state law by issuing Executive Order 15-13 to instruct his subordinates to disobey the IPLRA. *See D'Amico*, 698 F.2d at 906 ("[I]f administrative law judges do not have standing to bring such a suit they cannot confer it on themselves, bootstrap fashion, by disobeying the instruction and then complaining that their disobedience laid them open to discipline."). The Governor is free to rescind his Executive Order at any time. In essence, "[t]he mental disposition of the Governor is all that gives him cause to complain; were he to change his mind tomorrow and decide, rightly or wrongly, that the state statute is valid, he would no longer have any interest in the case. He has no personal stake in the outcome of this case; he will not be affected favorably by a decision that the statute is unconstitutional nor

adversely by a decision that it is valid." *Finch*, 585 F.2d at 774.

II. The Complaint Fails To State a Claim for Relief.

Even if the Court has jurisdiction, the complaint still must be dismissed for failure to state a claim. The complaint seeks a declaration that "[t]he Fair Share Contract Provisions under the IPLRA are unconstitutional under the First Amendment." Complaint at 21. At the same time, the complaint accurately states that "[i]n *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the United States Supreme Court considered and approved 'fair share' provisions under a public sector labor contract." Complaint ¶ 71. That concession is fatal to the request that fair share provisions be declared unconstitutional. "If a precedent of [the Supreme] Court has direct application in a case," the obligation of a lower court is to "follow the case which directly controls, leaving to [the

Supreme] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). There is no question that *Abood* squarely held that fair share agreements are constitutional "insofar as the service charge is used to finance expenditures by the Union for the purposes of collective bargaining, contract administration, and grievance adjustment." 431 U.S. at 225-26. And just recently, the Supreme Court refused to even consider the "argument that *Abood* should be overruled." *Harris v. Quinn*, 134 S. Ct. 2618, 2638 n.19 (2014).

The complaint suggests that *Abood* is certain to be overruled, because "since *Abood*, the Supreme Court has repeatedly recognized that compelling a state employee to financially support a public sector union

seriously impinges upon the free speech and association interests protected by the First Amendment." Complaint ¶ 71. Far from suggesting that *Abood* should be overruled, however, the Court's precedents have carefully erected a set of legal rules to ensure fair share agreements are applied in a manner that does not infringe the First Amendment rights of fee payers. Thus, the Court has carefully distinguished the representational activities to which objecting fee payers can be compelled to contribute from other union activities to which they may not be compelled to contribute. *See Locke*, 555 U.S. at 217-21; *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991). And the Court has described what sort of procedures a union must adopt to ensure that objecting fee payers are not compelled to contribute to nonrepresentational activities. *See Knox v. Service Employees*, 132 S. Ct. 2277 (2012); *Chicago Teachers v. Hudson*, 475 U.S. 292 (1986). This long line of precedent demonstrates the Court's continued commitment to effectuating *Abood*'s holding that objecting nonmembers cannot be required to provide financial support "for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to [the union's] duties as collective-bargaining representative." 431 U.S. at 235.

The premise of the complaint is the Governor's assertion that "using compelled fair share' fees" to represent employees with regard to "mandatory subjects of collective bargaining," such as "wages, pensions, and benefits," violates the First Amendment. Ex. Ord. 15-13 at 2. But the whole point of the precedents elaborating *Abood* has been to ensure that the compelled fees are used only for such bargaining. From the outset, there has never been any question that compelling represented employees to contribute

to the costs of representation on matters germane to collective bargaining does not violate the First Amendment. Contrary to the Governor's assertion, no case, including *Harris*, suggests that the Supreme Court will overturn the decades of precedent that establish that proposition.

The *Harris* Court did not find fault with what it described as "the best argument . . . in support of *Abood*," 134 S. Ct. at 2637 n. 18 (opinion of the Court). That argument holds that "[w]hat justifies the agency fee . . . is the fact that the State compels the union to promote and protect the interests of nonmembers." *Id.* at 2636. As the *Harris* Court observed, Justice Scalia expressed that view in his separate opinion in *Lehnert*. *Id.* (citing *Lehnert*, 500 U.S. at 556 (opinion of Scalia, J.)). In that opinion, Justice Scalia explained that, although the government normally cannot compel individuals to provide financial support to a private organization even though they may benefit from the organization's activities, "[w]hat is distinctive ... about the 'free riders' who are nonunion members of the union's own bargaining unit is that, in some respects, *they* are free riders whom the law *requires* the union to carry." *Lehnert*, 500 U.S. at 556 (opinion of Scalia, J.) (emphasis in original). Justice Scalia identified this as "[t]he 'compelling state interest' that justifies th[e] constitutional rule" permitting a requirement that nonmembers must pay their share of the union's bargaining-related expenses. *Id.*

Far from rejecting that conclusion, in *Harris* the Court stated that "[t]his argument has little force *in the situation now before us*," 134 S. Ct. at 2637 (emphasis added) – a situation where the individuals in the bargaining unit (personal assistants who provided in-home care to disabled persons) were "quite

different from full-fledged public employees." *Id.* at 2638. The *Harris* Court declined to extend *Abood* to that situation precisely because, in the Court's view, the personal assistants' union did not have representational obligations comparable to those of unions in traditional public employment settings such as had been presented in *Abood*. *See id.* at 2635-37. *Harris* casts no doubt on the constitutionality of agency fees for unions that represent "full-fledged public employees."

In sum, the authorization of fair-share provisions by the Illinois Public Labor Relations Act is clearly constitutional. That being so, Executive Order 15-13 prohibiting the enforcement of fair-share provisions authorized by the IPLRA is without any legal basis and is preempted by the provisions of the IPLRA. *See* 5 ILCS 315/15(a).

CONCLUSION

For the foregoing reasons, the complaint should be dismissed.

Dated: March 5, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephen A. Yokich, an attorney, hereby certify that on March 5, 2015, I caused the foregoing Defendants' Memorandum in Support of Joint Motion to Dismiss to be filed electronically with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

I further certify that as of March 5, 2015, there are no nonregistered participants upon whom service by U.S. Mail is required.

/s/ Stephen A. Yokich
Stephen A. Yokich

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case No. 15 cv 1235

BRUCE RAUNER, in his official capacity as Governor of the State of Illinois,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 31, AFL-CIO, *et al.*,

Defendants.

Hon. Robert W. Gettleman

ILLINOIS ATTORNEY GENERAL'S MEMORANDUM IN SUPPORT OF HER MOTION TO DISMISS OR STAY

"Fair-share fees" — monies paid to public-sector unions by non-members to cover their share of the unions' cost to represent them in collective bargaining and contract administration — are constitutional under controlling Supreme Court precedent, are authorized by Illinois statute, and are required by collective bargaining agreements entered into by the Illinois Department of Central Management Services ("CMS"). Based on his personal belief that such fees are unconstitutional, however, newly elected Illinois Governor Bruce Rauner issued an executive order directing

CMS not to comply with the Illinois statute or with the fair-share fee provisions in those agreements (the "CBAs"). On the same day, he filed this action against the unions who are parties to those agreements (the "Unions") seeking a declaratory judgment that these fair-share fees violate the First Amendment rights of non-members of the Unions, who are not before this Court.

The Attorney General moved to intervene because this case draws into question the validity of a state statute. The Attorney General now moves to dismiss this case, either for lack of subject matter jurisdiction or pursuant to the Court's discretion not to hear a declaratory judgment claim. In the alternative, the Attorney General moves to stay this case on abstention grounds. As more fully set forth below, her motion emphasizes the following points. *First*, the Governor may not use this suit as a preemptive strike against an anticipated state court lawsuit against him for violating state law in which he could assert federal law only as a *defense* to the state-law claims. *Second*, the Governor is not complaining of any violation of his *own* First Amendment rights, but instead has claimed the ability to vindicate the First Amendment rights of *other persons* who are not before this Court. *Third*, the Governor is inappropriately asking a federal court to declare the scope of his authority to issue executive orders *under state law*.

Factual Background

The Illinois Public Labor Relations Act

The Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* (the "IPLRA"), authorizes certain public-sector workers to engage in collective bargaining with their employer and enter into labor agreements

through a chosen union. (Complaint ¶¶ 47-49.) The union must negotiate on behalf of all covered employees and otherwise represent their interests, but such employees are not required to be union members. (*Id.* ¶¶ 48-49.) Section 6(e) of the IPLRA provides that a collective bargaining agreement can require nonmembers to pay "their proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment." (*Id.* ¶ 50.) Section 6(e) also states that when a collective bargaining agreement includes such a provision and the union certifies the amount of fair-share fees, those fees "shall be deducted by the employer from the earnings of the nonmember employees and paid to the employee organization the public employer." 5 ILCS 315/6(e).

The 2012 Collective Bargaining Agreements and Fair-Share Provisions

In 2012, CMS, an agency under the jurisdiction of the Illinois Governor, entered into the CBAs, which "require the deduction of 'fair share' fees from the earnings of the nonmembers, with the fees then paid to the contracting unions." (Complaint ¶ 3.) (The Complaint refers to these provisions as the "Fair Share Contract Provisions.") Pursuant to Section 21.5 of the IPLRA, those agreements expire by law on June 30, 2015. 5 ILCS 315/21.5.

Governor Rauner's Personal Belief that Fair-Share Fees Are Unconstitutional

Governor Rauner took office on January 12, 2015. Based on his interpretation of the Supreme Court's decisions in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and *Harris v. Quinn*, 134 S. Ct. 2618 (2014), he "has concluded" that the fair-share fees "are

coerced political speech, in violation of the First Amendment of the United States Constitution." (Complaint ¶ 6.)[1]

The Governor's Executive Order

On February 9, 2015, Governor Rauner issued Executive Order 15-13 (the "Executive Order"). It "directs CMS to suspend the deduction and remittance of fees imposed by the Fair Share Contract Provisions," and to hold them "in an escrow account" pending "the determination by any court of competent jurisdiction." (*Id.* ¶ 8.)[2]

Governor Rauner's Complaint

On the same day he issued the Executive Order, Governor Rauner filed his Complaint in this case. Paragraph 1 alleges that he "issued the executive order to address the unconstitutionality of a provision within certain of the collective bargaining agreements that state agencies have entered into with the Unions, as currently permitted by . . . 5 ILCS 315/6," and that

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[1] *Abood* held that the First Amendment allows public sector labor agreements to require non-union members to pay fair-share fees to defray the costs of the union's representation of them in collective bargaining and contract administration. 431 U.S. at 241-242. Less than a year ago, in *Harris*, 134 S. Ct. at 2630-38, the Supreme Court explicitly declined to overrule *Abood*. Although neither this Court nor the Seventh Circuit has the authority to overrule Supreme Court precedent, see *Rodriguez de Quijas v. Shearson/American Exp., Ltd.*, 490 U.S. 477, 484 (1989), Governor Rauner asks this Court to do so.

[2] The Executive Order is not attached to the Complaint but is available on the Official Website for the State of Illinois at www.illinois.gov/Government/ExecOrders/Documents/2015/ExecutiveOrder *2015-13.pdf* (last accessed Mar. 9, 2015). A copy is attached as Exhibit A to the Attorney General's motion to dismiss.

he brought this suit "to resolve a controversy between his office and the [Unions] regarding the legality of the Governor's Executive Order 15-13." (Complaint ¶ 1.) In support of these requests, the Complaint alleges that the fair-share fees authorized by Section 6(e) of the IPLRA and required by the CBAs infringe the First Amendment rights of state workers who are not union members. (*Id.* ¶¶ 79, 81.) The Complaint alleges that Governor Rauner has a "duty to protect the First Amendment rights of all people in the State of Illinois." (*Id.* ¶ 84; see also *id.* ¶ 46.) It further alleges that, based on the Governor's "sworn duty to faithfully execute the laws and support the United States and Illinois Constitution," he "cannot condone th[e] unconstitutional coercion of speech" resulting from the fair-share fees. (*Id.* ¶¶ 2, 6.) The Complaint also alleges that Governor Rauner has "a substantial legal interest in resolving such a controversy immediately in order to . . ."

> [p]revent the possible unnecessary expense and inefficiency that could result from an extended period in which the Executive Branch commits itself to the implementation of Executive Order 15-13, only to have its validity thrown into question by *multiple challenges from the various separate and independent Defendant unions*; . . . . (*Id.* ¶ 86, emphasis added.)

The Complaint alleges that declaratory relief is necessary to prevent various types of "distraction" to the Governor, personnel within the executive branch, and "all people of the State of Illinois that will result from the continuing dispute between the Unions and the Governor concerning the issuance of his Executive

Order." (*Id.* ¶ 16.) The prayer for relief seeks an order declaring that:

(1) The Fair Share Contract Provisions under the IPLRA are unconstitutional under the First Amendment of the United States Constitution; and

(2) The Governor's Executive Order 15-13 is within the Governor's powers under the Illinois constitution. (*Id.* p. 21.)

The Unions' State-Court Action

On March 5, 2015, the Unions filed a parallel action in Illinois state court (*Illinois AFL-CIO, et al. v. Bruce Rauner, Governor of the State of Illinois, et al.*, St. Clair County, Ill. Case No. 2015 CH 171). (The Court may take judicial notice of that complaint, see *Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 1994), a copy of which is attached to the Attorney General's motion to dismiss.) The Unions' Complaint names as plaintiffs 26 labor unions who are parties to the CBAs, and names as defendants Governor Rauner, the CMS Director, the Illinois State Police and its Director.

Count I of the Unions' Complaint alleges that the Executive Order exceeds the Governor's authority under Illinois law, and it seeks declaratory and injunctive relief prohibiting the defendants from implementing the Executive Order and violating the IPLRA. Count II alleges that the Executive Order violates the fair-share fee provisions of the CBAs, and that the Unions have begun grievance proceedings contesting that violation pursuant to the dispute resolution provisions of the CBAs and the IPLRA, which require arbitration as one step of the process. The Unions seek an "injunction in aid of arbitration" to protect the Unions' rights during the pendency of

that dispute resolution process, which could be prolonged.

Argument

I. This Case Should Be Dismissed for Lack of Subject Matter Jurisdiction.

A. Under the Well-Pleaded Complaint Rule, the Court Does Not Have Subject Matter Jurisdiction Over This Action.

This action is not within the Court's subject matter jurisdiction under 28 U.S.C. § 1331 and should be dismissed under Fed. R. Civ. P. 12(b)(1). Section 1331 confers original jurisdiction on the federal courts to hear "all civil actions arising under the Constitution, laws, or treaties of the United States." Under the well-pleaded complaint rule, federal law must be an essential element of a claim for affirmative relief, and federal jurisdiction does not extend to attempts to bring a claim (including a claim for a declaratory judgment) in which federal law represents only an alleged *defense* to anticipated state-law claims. *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 8-12 (1983); *Chicago Tribune Co. v. Bd. of Trs. of Univ. of Ill.*, 680 F.3d 1001, 1005 (7th Cir. 2012). That is precisely the situation here. Governor Rauner's Complaint does not assert a valid federal-law cause of action, but instead improperly seeks to use a federal forum for a preemptive strike against anticipated state-law claims to which the Governor allegedly has a federal-law defense.

The Governor's Complaint does not seek any affirmative relief against the Unions on the basis that they allegedly violated his First Amendment rights. On the contrary, through his Executive Order the Governor has directed CMS to breach the CBAs and to

violate Section 6(e) of the IPLRA. Anticipating that the Unions would file suit based on his Executive Order, he attempts to rely on the First Amendment as a preemptive defense to claims against him and CMS for breaching the CBAs and violating Section 6(e) of the IPLRA. The Governor's Complaint essentially admits that the purpose of this action is to fend off such state-court suits when it alleges that declaratory relief is justified to prevent "distraction" to him and the People of Illinois and to prevent "unnecessary expense and inefficiency that could result from . . . multiple challenges [to the Executive Order] from the various . . . unions." (Complaint ¶¶ 16, 86.)

The Declaratory Judgment Act, 28 U.S.C. § 2201, does not cure this jurisdictional deficiency. The Declaratory Judgment Act provides a remedy where federal jurisdiction already exists but does not expand that jurisdiction. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671-74 (1950); *Primax Recoveries, Inc. v. Sevilla*, 324 F.3d 544, 548 (7th Cir. 2003); *Ceres Terminals, Inc. v. Industrial Comm'n of Ill.*, 53 F.3d 183, 185 (7th Cir. 1995) (rejecting effort to use Declaratory Judgment Act to avoid well-pleaded complaint rule); see also *Public Serv. Comm'n v. Wycoff*, 344 U.S. 237, 248 (1952). Because this Court has no jurisdiction in this case to grant declaratory relief, which is the only relief sought, this case should be dismissed.

B. There Is No Article III Case or Controversy.

This case should also be dismissed for lack of jurisdiction because the Governor lacks standing to bring this lawsuit, and therefore there is no justiciable controversy under Article III of the Constitution. A party invoking federal jurisdiction bears the burden of establishing its standing under Article III. *Lujan v.*

Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). To establish the three elements that comprise the "irreducible constitutional minimum of standing," the plaintiff must have suffered (1) an injury in fact, (2) that is fairly traceable to the action of the defendant, and (3) is redressable by a favorable decision. *Id.* at 560-61. The Article III case-or-controversy requirement applies equally to declaratory judgment suits. *Deveraux v. City of Chicago*, 14 F.3d 328, 330 (7th Cir. 1994).

The Governor has not suffered a legally cognizable "injury in fact" in this case. To satisfy this element of Article III standing, a plaintiff must suffer an "invasion of a legally protected interest" that is both "concrete" and "particularized," in the sense that "the injury must affect the plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 560 & n.1; see also *Raines v. Byrd*, 521 U.S. 811, 819 (1997). Article III is not satisfied by alleging an injury that is a "generally available grievance about government," or by asserting "only harm to [the plaintiff's] and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large." *Lujan*, 504 U.S. at 573-74. A party challenging a statute must show that "he has sustained or is in danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." *Id.* at 574 (citation and internal quotation marks omitted). A generalized claim to have the government "act in accordance with law" is not sufficient. *Id.* at 575-76. That is all the Governor alleges here.

The Governor's allegation that he seeks to protect the First Amendment rights of "all people in the State

of Illinois" (Complaint ¶¶ 46, 84) does not give the Governor Article III standing. Significantly, the Governor does not allege an invasion of *his own* First Amendment rights. Instead, he repeatedly alleges that the fair-share fee provisions in the CBAs, authorized by Section 6(e) of the IPLRA, violate the First Amendment rights of non-members of the Unions. (*Id.* ¶¶ 79-81.) But he is not the legal representative of these non-members, and any First Amendment injury to them does not injure him, as Governor, in any concrete and particularized way. He therefore lacks the requisite personal stake in resolution of the issue he wants adjudicated in this case. *Lujan*, 504 U.S. at 563. Governor Rauner's appeal to unspecified "distractions" to his office that result from his own Executive Order, not from any First Amendment injury arising from the fair-share fee provisions in the CBAs, also does not establish the type of "concrete" and "particularized" injury traceable to the defendants' conduct that is necessary to establish Article III standing. See *Id.* at 560-61 & n.1.

In an apparent attempt to overcome this jurisdictional defect, the Governor alleges that he has been injured by the fair-share fee provisions in the CBAs because he has a duty to "faithfully execute the laws and support the United States and Illinois Constitutions" pursuant to his oath of office and his supreme executive power under the Illinois Constitution. (Complaint ¶¶ 6, 45-46, 84.) But the Governor's stated desire to uphold his oath of office based on his personal beliefs about the First Amendment does not give him a sufficient stake to establish standing to challenge the validity of properly enacted state laws. See *Donelon v. Louisiana Div. of Admin. Law ex rel. Wise*, 522 F.3d 564, 566-68 (5th Cir. 2008); *Finch v. Miss. State Med. Ass'n.*, 585 F.2d 765, 774 (5th Cir.

1978); see also *Drake v. Obama*, 664 F.3d 774, 780 (9th Cir. 2011); *Cronson v. Clark*, 810 F.2d 662, 665 (7th Cir. 1987); *Legislature of the Virgin Islands v. DeJongh*, 645 F. Supp. 2d 452, 459-64 (D.V.I. 2009).

In *Finch*, for example, the governor of Mississippi challenged the constitutionality of a state statute on the ground that he believed it violated the Fourteenth Amendment. 585 F.2d at 769. Holding that the governor lacked Article III standing to challenge the statute based on his beliefs that it was unconstitutional and that enforcing it would violate his oath of office, the court stated: "He has no personal stake in the outcome of the case; he will not be affected favorably by a decision that the statute is unconstitutional nor adversely by a decision that it is valid." *Id.* The court added: "The mental disposition of the Governor is all that gives him cause to complain; were he to change his mind tomorrow and decide, rightly or wrongly, that the state statute is valid, he would no longer have any interest in the case." *Id.* at 774.[3]

Likewise, in *Donelon*, the Court held that a public official lacked standing to challenge the constitutionality of a statute where he was not adversely affected by the statute and his only "interest in the

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[3] *Finch* demonstrates the Governor's lack of standing in the instant case in another way as well. There, the Mississippi governor chose to violate the law, rather than comply with what he felt was an unconstitutional command. 585 F.2d at 775. Because he refused to abide by the law he challenged, he could no longer claim that he had been injured by following it. *Id.* Here, too, Governor Rauner has declared that he does not consider himself bound by Section 6(e) or by the fair-share fees provisions in the CBAs, and he issued the Executive Order directing CMS to cease complying with those provisions — in effect, to breach them. Having done so, he cannot claim to be harmed by those provisions.

litigation [was] official, rather than personal." 522 F.3d at 566. The Fifth Circuit added: "Donelon . . . is merely suing to ensure Louisiana law conforms to his *opinion* of what federal law requires." *Id.* at 568 (emphasis in original) (citing *Cronson*, 810 F.2d at 665).

And in *Cronson*, the Seventh Circuit held that the Illinois auditor general lacked standing to seek federal court relief in support of his claim that he had a state-law right to conduct a broader audit of the Illinois Supreme Court than it would permit. Holding that "[h]is dispute simply has no place in a federal court," the Court declared: "Indignation that the law is not being obeyed, sympathy for the victims of that disobedience, a passionate desire to do one's legal duty — none of these emotions, however laudable, sincere, and intense, will support a federal lawsuit." 810 F.2d at 665. This case is no different.

C. Even If There Were Article III Jurisdiction, Prudential Standing Doctrines Require Dismissal.

The Governor's action also runs afoul of prudential standing limitations. Under those limitations, a federal court generally will not entertain jurisdiction over a plaintiff's assertion of the rights of others. *Marin-Garcia v. Holder*, 647 F.3d 666, 670 (7th Cir. 2011). As the Supreme Court instructed in *Warth v. Seldin*, 422 U.S. 490, 499 (1975), to have standing, "the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." The Declaratory Judgment Act likewise "provides a cause of action only to those seeking a declaration of their own legal rights." *Edgewood Manor Apartment Homes, LLC v. RSUI Idem. Co.*, 733 F.3d 761, 772 n.2 (7th Cir. 2013).

This case does not present an exception to that rule on the basis that the plaintiff has "a close relation to the third party" and there is "some hindrance to the third party's ability to protect his or her own interest." *Marin-Garcia*, 647 F.3d at 670. Here, the Governor purports to vicariously protect the First Amendment rights of non-members of the Unions. That desire does not give him the type of close relationship necessary for standing, and that group is not hindered in its ability to assert its own rights.

II. In the Alternative, This Action Should Be Dismissed As an Inappropriate Case for Issuing a Declaratory Judgment.

Even if the Court had jurisdiction, it should still dismiss this case because it does not present suitable circumstances for issuing relief under the Declaratory Judgment Act. Declaratory relief is a discretionary remedy a district court may decline to exercise. *A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 331 (1961); *Envision Healthcare, Inc. v. Preferred One Ins. Co.*, 604 F.3d 983, 985-86 (7th Cir. 2010). The Court has "wide discretion in deciding whether or not to exercise its authority" under the Declaratory Judgment Act. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286-87 (1995).

Here, this Court should decline to hear this case because a state court case on the same subject is now pending. In such circumstances, factors relevant to whether to entertain a declaratory judgment action include (1) whether the case presents novel state-law issues, *Sta-Rite Indus., Inc. v. Allstate Ins. Co.*, 96 F.3d 281, 287 (7th Cir. 1996); (2) how far the federal action has progressed, *id.*; (3) whether that action is being used "as an instrument of procedural fencing . . . to choose a forum," *Tempco Elec. Heater Corp.*, 819 F.2d

at 750 (citation and internal quotation marks omitted); and (4) whether a declaratory action would "increase the friction between our federal and state courts," *NUCOR Corp. v. Aceros Y Maquilas de Occidente, S.A. de C.V.*, 28 F.3d 572, 579 (7th Cir. 1994) (citation and internal quotation marks omitted); see generally *Arnold v. KJD Real Estate, LLC*, 752 F.3d 700, 707 (7th Cir. 2014). In light of those factors, the Court should decline to entertain the Governor's request for declaratory relief.[4]

This case is a paradigmatic example of "procedural fencing" intended to win a race to the courthouse and preempt state court litigation involving the same controversy — a controversy created by the Governor's Executive Order. This case has not progressed to any meaningful degree. A complete adjudication of the relevant dispute, including any First Amendment defense by CMS, can be obtained in the state court litigation. And only a state court can, and should, give a definitive ruling on the Complaint's request for declaratory relief concerning the scope of the Governor's state-law authority to issue executive orders.

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[4] The Court's ability to dismiss a declaratory judgment suit that duplicates or overlaps with state court litigation does not depend on which suit is filed first. *Tempco Elec. Heater Corp. v. Omega Engineering, Inc.*, 819 F.2d 746, 749-50 (7th Cir. 1987). Moreover, "it is not the function of the declaratory judgment action merely to anticipate a defense that otherwise could be presented in a state action." 10A C. Wright, A. Miller & M. Kane, *Federal Practice & Procedure* § 2758 (3d ed. 1998). As the Supreme Court stated in *Public Service Commission*, "Federal courts will not seize litigations from state courts merely because one, normally a defendant, goes to federal court to begin his federal-law defense before the state court begins the case under state law." 344 U.S. at 248.

Further, because this action seeks a federal court ruling on the substance of state law regarding the scope of the Governor's power to issue an executive order that conflicts with a state statute, it represents an "intramural dispute" within Illinois government that this Court should avoid. Federal courts "should not get involved unnecessarily in what may be intramural struggles of state government even if invited to do so by one of the contenders." *Mazanec v. North Judson-San Pierre Sch. Corp.*, 763 F.2d 845, 848 (7th Cir. 1985). "[F]ederal courts do not sit to resolve intramural disputes among state officials over the bounds of their authority under state law." *Cronson*, 810 F.2d at 665. But that is exactly what this case presents.

Even if the Governor could overcome the jurisdictional obstacles, he also does not have a clear path to a decision on the First Amendment claim he wants the Court to address. Principles of constitutional avoidance require the Court first to determine whether that issue has been waived. See *United States v. Percy*, 250 F.3d 720, 727 (9th Cir. 2001); *Transmatic, Inc. v. Gulton Indus., Inc.*, 53 F.3d 1270, 1279 (6th Cir. 1995); see also *Nat'l Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1126 (7th Cir. 1995). It is well established that constitutional rights may be waived, such as by entering into a contract whose performance is inconsistent with a later assertion of the right. *Batagiannis v. West Lafayette Cmty. Sch. Corp.*, 454 F.3d 738, 741 (7th Cir. 2006); *United States ex rel. Simmons v. Lohman*, 228 F.2d 824, 826 (7th Cir. 1955); see also *Erie Telecommun. v. City of Erie*, 853 F.2d 1084 (3d Cir.1988) (waiver of First Amendment rights). Thus, even if Governor Rauner's First Amendment concerns were otherwise cognizable, there is a threshold issue — namely, whether CMS (which is under the Governor's jurisdiction) waived those concerns

by entering into the very CBAs the Governor has now ordered it to breach — that may make a ruling on the ultimate First Amendment issue unnecessary, and thus unjustified. For this reason as well, the Court should decline to exercise any jurisdiction it may have to grant declaratory relief.

III. The Court Should Abstain from Hearing this Case.

A. Colorado *River* Abstention is Warranted.

In *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 818 (1976), the Supreme Court held that in limited circumstances a federal court may stay an action when there is an ongoing parallel action in state court. See also *LaDuke v. Burlington N. R.R. Co.*, 879 F.2d 1556, 1558 (7th Cir. 1989); *Pellico v. Mork*, 2014 WL 4948124 at *2-4 (N.D. Ill. Oct. 1, 2014). Separate actions are parallel if "substantially the same parties are litigating substantially the same issues" in both suits. *AAR Int'l, Inc. v. Nimelias Enters. S.A.*, 250 F.3d 510, 518 (7th Cir. 2001) (citation and internal quotation marks omitted). The presence of additional parties or issues in either case does not preclude a finding that they are parallel. *Caminiti & Iatarola, Ltd. v. Behnke Warehousing, Inc.*, 962 F.2d 698, 701 (7th Cir.1992). Here, this suit and the Unions' state-court action readily satisfy that requirement for *Colorado River* abstention. Both actions share the same parties and address the same basic issue: whether the Governor Rauner's Executive Order violates the fair-share fee provisions of the CBAs, and whether the Governor exceeded his authority in promulgating the Executive Order.

The factors relevant to whether a court should abstain under the *Colorado River* doctrine include: (1)

whether the state has assumed jurisdiction over property; (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which jurisdiction was obtained by the concurrent fora; (5) the source of governing law; (6) the adequacy of state court action to protect the federal plaintiff's rights; (7) the relative progress of the state and federal proceedings; (8) the presence or absence of concurrent jurisdiction; (9) the availability of removal; and (10) the vexatious or contrived nature of the federal claim. *Lumen Constr., Inc. v. Brant Constr. Co., Inc.*, 780 F.2d 691, 694-95 (7th Cir. 1985); *Pellico*, 2014 WL 4948124 at *3. No single factor is determinative, and the decision is based on the totality of the circumstances. *Pellico*, 2014 WL 4948124 at *3-4. Here, the relevant factors establish this as an exceptional case in which *Colorado River* abstention should be granted, and this case therefore should be stayed.

The contrived nature of the Governor's federal claim militates against having this Court be the forum for his attempt to turn what is, at best, a federal-law defense to anticipated state-law claims into a preemptive strike against those claims. The state-court suit cannot be removed under 28 U.S.C. § 1446 because it does not include any federal-law claim and involves non-diverse parties. Allowing this case to proceed at the same time therefore will create an unseemly "race to judgment" between state and federal courts. That prospect is all the more unjustified because one of the central issues raised by the Governor in this case is an issue of state law (*i.e.*, whether the Executive Order is within the scope of the Governor' authority under Illinois law). Conversely, the state court can address all issues properly raised, including any First Amendment defense to the Unions' claims to enforce Section

6(e) and the fair-share fee provisions in the CBAs. Finally, the property in dispute — the monies affected by the Executive Order — should not be subject to judicial oversight by two courts simultaneously. The complications of having this Court oversee those funds pending this case, and then arranging their distribution either to the Unions or to their non-members, provides yet another reason to abstain. None of the other factors has any significance, much less tips the balance against abstention under *Colorado River*.

B. *Pullman* Abstention is Warranted.

Abstention is also warranted under the *Pullman* doctrine (named after the Supreme Court's decision in *Railroad Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941)), which applies when "the resolution of a federal constitutional question might be obviated if the state courts [are] given the opportunity to interpret ambiguous state law." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716-17 (1996); see also *Int'l Coll. of Surgeons v. City of Chicago*, 153 F.3d 356, 365 (7th Cir.1998); *Gardner v. City of Chicago*, 2012 WL 716926, *3 (N.D. Ill. Mar. 2, 2012). Describing the Supreme Court's holding in *Pullman*, the Seventh Circuit in *International College of Surgeons* stated that "if the state court ruled in favor of the plaintiffs and held that the commission did not have the power under state law to issue the [challenged] regulation, the matter would be resolved, and the Court would avoid the unnecessary determination of a federal constitutional question." 153 F.3d at 365. Thus, the Seventh Circuit explained, in *Pullman* "abstention was appropriate . . . pending a state court determination whether the commission possessed the authority to issue the regulation" because it "would 'avoid the waste of a tentative decision' with respect to an uncertain issue

of state law, 'as well as the friction of a premature constitutional adjudication.'" *Id.* (quoting *Pullman*, 312 U.S. at 500). The same situation is present here.

The Governor's Complaint alleges that the controversy between him and the Unions arises by virtue of his Executive Order, which directs CMS not to comply with Section 6(e) of the IPLRA and the fair-share fee provisions of the CBAs. (Complaint ¶ 14.) The Complaint also makes clear that whether the Governor's Executive Order exceeds his authority under Illinois law is uncertain and unsettled, which is why he seeks declaratory relief on that point of state law. (*Id.* ¶¶ 10, 97.) But a definitive ruling on that issue must necessarily come from a state court. And if the ultimate resolution on that issue is that the Executive Order exceeded the Governor's authority under Illinois law, the basis for his claim that there is a justiciable controversy concerning his vicarious constitutional claim would be gone. For that reason as well, the Court should abstain from proceeding with this case.

Conclusion

For the foregoing reasons, the Attorney General respectfully requests that this Court dismiss the Governor's complaint for lack of subject matter jurisdiction or in the exercise of its discretion under the Declaratory Judgment Act, or, in the alternative, that it stay this case pending resolution of the parallel state court action.

March 9, 2015

Respectfully submitted,

/s/ Richard Huszagh

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

No. 1:15-CV-01235

BRUCE RAUNER, Governor of the State of Illinois,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, *et al.*,

Defendants,

LISA MADIGAN, Attorney General of the State of Illinois,

Intervenor.

Judge Robert W. Gettleman
Magistrate Daniel G. Martin

EMPLOYEE MOTION TO INTERVENE

Mark Janus, Marie Quigley, and Brian Trygg hereby move to intervene in this action pursuant to Federal Rule of Civil Procedure 24(a) or (b). The grounds for this motion are stated in the following brief and are supported by the attached declarations. Movants also submit a com-plaint that serves as the responsive pleading required by Rule 24(c).

Dated: March 23, 2015

Respectfully submitted,

/s/ Joseph J. Torres

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** *Pro Hac Vice Motions to Be Filed*

Attorneys for Movant Employees

CERTIFICATE OF SERVICE

I, Joseph A. Torres, hereby certify that on March 23, 2015, I caused the foregoing Employee Motion to Intervene to be filed electronically with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

By: /s/ Joseph J. Torres
Joseph J. Torres

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case No. 1:15-cv-01235

BRUCE RAUNER, Governor of the State of Illinois,

Plaintiff,

MARK JANUS, MARIE QUIGLEY, and BRIAN TRYGG,

Plaintiffs,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES COUNCIL 31, AFL-CIO, *et al.*,

Defendants,

LISA MADIGAN, Attorney General of the State of Illinois,

Intervenor.

Hon. Judge Robert W. Gettleman
Magistrate Daniel G. Martin

FIRST AMENDED COMPLAINT

Plaintiff Governor Bruce Rauner (the "Governor") and newly joined Plaintiffs Mark Janus, Marie Quigley, and Brian Trygg (collectively, "Employees"), state and reallege as follows:

NATURE OF ACTION

Governor Rauner

1. The Governor brings this action to resolve a controversy between his office and the various public sector labor unions named as Defendants in this case (the "Unions") regarding the legality of the Governor's Executive Order 15-13. The Governor issued the Executive Order to address the unconstitutionality of a provision contained within certain collective bargaining agreements that state agencies have entered into with the Unions, as currently permitted by the Illinois Public Labor Relations Act ("IPLRA"), 5 ILCS 315/6.

2. It is the Governor's sworn duty to faithfully execute the laws and support the United States and Illinois Constitutions. Under the IPLRA, it is currently permissible for collective bargaining agreements covered by the IPLRA to require state employees who are not full members of the Unions ("nonmembers") to pay what are called "fair share" union fees. *See* 5 ILCS 315/6.

3. As currently permitted by the IPLRA, the Illinois Department of Central Management Services ("CMS"), an agency within the direction and control of the Governor, has entered into collective bargaining agreements that require the deduction of "fair share" fees from the earnings of the nonmembers, with the fees then paid to the contracting unions (hereinafter, "Fair Share Contract Provisions").

4. The constitutionality of such provisions was first considered by the United States Supreme Court in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). However, since *Abood*, the Supreme Court has repeatedly acknowledged that compelling a state

employee to financially support a public sector union seriously impinges upon free speech and association interests protected by the First Amendment of the United States Constitution.

5. More recently, in *Harris v. Quinn*, __ U.S. __, 134 S. Ct. 2618 (2014), a majority of the Supreme Court outlined an interpretation of the First Amendment that, in light of the current circumstances of Illinois public sector collective bargaining, is incompatible with nonmembers being compelled to pay "fair share" fees such as those required by the Fair Share Contract Provisions.

6. In light of these circumstances, the Governor has concluded these nonmember fee deductions are coerced political speech, in violation of the First Amendment of the United States Constitution. Pursuant to his oath of office under article XIII, section 3 of the Illinois Constitution, and his duty to execute the laws under article V, section 8 of the Illinois Constitution, the Governor cannot condone this unconstitutional coercion of speech.

7. Under the Supremacy Clause contained in Article VI of the United States Constitution, the First Amendment supersedes any inconsistent purported requirements within Illinois statutes, thus rendering *ultra vires* any public union collective bargaining agreement provision that would violate nonmembers' First Amendment rights.

8. The Governor has thus promulgated Executive Order 15-13, which directs CMS to suspend the deduction and remittance of fees imposed by the Fair Share Contract Provisions.

9. The Unions' legal interests are adverse to the Governor's interests and obligations under the Illinois

and U.S. Constitutions, in light of the unconstitutionality of the Fair Share Contract Provisions, because, pursuant to Executive Order 15-13, the Governor has directed CMS to suspend such deductions, thereby preventing the Unions from collecting fees under those provisions.

10. The Governor therefore seeks a declaratory judgment that deducting fees under the Fair Share Contract Provisions from the earnings of nonmember public employees is unconstitutional under the First Amendment of the United States Constitution, and that Executive Order 15-13 was within the Governor's powers under the Illinois Constitution. The Governor also seeks a declaration that performance under the collective bargaining agreements is impossible due to the unconstitutionality of the Fair Share Contract Provisions and his non-performance is therefore excused.

Non-Union, Public Employees

11. Mark Janus, Marie Quigley, and Brian Trygg (the "Employees") are employed by the State of Illinois. They are each exclusively represented by one of the Defendant unions (the "Unions"), but they are not members of the Unions. The Employees are being forced to pay compulsory union fees as a condition of their employment pursuant to the Illinois Public Labor Relations Act ("IPLRA"), 5 ILCS 315/6.

12. The Employees submit that this collection of compulsory fees from them violates their rights under the First Amendment to the United States Constitution. They seek a declaratory judgment against the State and Unions to this effect; injunctive relief that prohibits the State and Unions from seizing compulsory fees from them in the future; a declaratory judgment that Executive Order 15-13 is constitutional;

and damages from the Unions for compulsory fees wrongfully seized from them.

JURISDICTION AND VENUE

13. This Court has jurisdiction to adjudicate the Governor's claims pursuant to 28 U.S.C. § 1331, because they arise under the United States Constitution. This Court has supplemental jurisdiction over any state law issues pursuant to 28 U.S.C. § 1367. This Court has the authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief.

14. This Court has jurisdiction over the Employees' claims pursuant to 28 U.S.C. § 1331, because they arise under the United States Constitution, and 28 U.S.C. § 1343, because Employees seek relief under 42 U.S.C. § 1983. This Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other relief based thereon.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Employees' and the Governor's claims arise in this judicial district. A number of Unions reside within this district pursuant to Section 1391(c)(2) and (d), because they conduct their business and have offices within the Northern District of Illinois, including but not limited to: (a) American Federation of State, County, and Municipal Employees Council 31; (b) Teamsters Local 700; and (c) United Brotherhood of Carpenters and Joiners of America, Chicago Regional Council of Carpenters. All of the other Defendants are residents of Illinois.

16. Further, a substantial part of the events giving rise to this action took place in this judicial district because, among other reasons, some of the state employees who have been subject to the improper Fair

Share Contract Provision deductions work and/or reside within the district.

PARTIES

17. Plaintiff Bruce Rauner is the Governor of the State of Illinois and its chief executive officer.

18. Plaintiff Mark Janus resides in Sangamon County, Illinois. He is employed by Illinois' Department of Healthcare and Family Services in a bargaining unit exclusively represented by AFSCME Council 31. However, Janus is not a member of the Union.

19. Plaintiff Marie Quigley resides in Sangamon County, Illinois. She is employed by Illinois' Department of Public Health in a bargaining unit exclusively represented by AFSCME Council 31. However, Quigley is not a member of the Union.

20. Plaintiff Brian Trygg resides in Edgar County, Illinois. He is employed by Illinois' Department of Transportation in a bargaining unit exclusively represented by Teamsters Local 916. However, Trygg is not a member of the Union.

21. American Federation of State, County, and Municipal Employees Council 31 ("AFSCME Council 31"), AFL-CIO, is a labor union that exclusively represents over 35,000 public employees in Illinois, and has an office located at 205 N. Michigan Ave., Suite 2100, Chicago, Illinois 60601.

22. Teamsters Downstate Illinois State Employee Negotiating Committee is a labor union representing certain employees in collective bargaining covering all Illinois counties excluding Cook, DuPage, Kane, Kankakee, Kendall, Lake, McHenry, and Will, who represents more than 1,400 employees under the jurisdiction of the Governor, including but not limited

to highway workers, and temporary snow and ice workers, with an office located at 7101 North Allen Road, Peoria, Illinois 61614.

23. Teamsters Local 700, Affiliated with the International Brotherhood of Teamsters Cook County, represents more than 600 employees under the jurisdiction of the Governor, including but not limited to state police master sergeants, highway workers, and temporary snow and ice workers, with an office located at 1300 West Higgins Road, Suite 301, Park Ridge, Illinois 60068.

24. Local No. 330, General Chauffeurs, Sales Drivers and Helpers (Fox Valley), including Teamsters Local 705, represents more than 200 employees under the jurisdiction of the Governor, including but not limited to highway workers, and temporary snow and ice workers, with an office located at 2400 Big Timber Road, Building B, Suite 201, Elgin, Illinois 60123.

25. General Teamsters/Professional & Technical Employees Local Union No. 916 ("Teamsters Local 916") is a labor union that exclusively represents over 2,700 public employees in Illinois, and has an office located at 3361 Teamster Way, Springfield, Illinois 62702.

26. International Union of Bakery, Confectionery, and Tobacco Workers represents two employees under the jurisdiction of the Governor, including but not limited to bakers, with an office located at 7310 West 39th Street, Suite 200, Lyons, Illinois 60534.

27. International Brotherhood of Boilermakers – Iron Shipbuilders, Blacksmiths, Forgers, and Helpers represents more than 10 employees under the jurisdiction of the Governor, including but not limited to boiler

safety specialists, with an office located at 2941 South Archer Avenue, Chicago, Illinois 60608.

28. Illinois State Bricklayers and Allied Craftworkers represents four employees under the jurisdiction of the Governor, including but not limited to bricklayers, with a mailing address located at 7 North High Street, Suite 401, Post Office Box 347, Belleville, Illinois 62222.

29. United Brotherhood of Carpenters and Joiners of America (on behalf of Chicago Regional Council of Carpenters, Mid-Central Illinois Regional Council, St. Louis Missouri District Council) represents more than 120 employees under the jurisdiction of the Governor, including but not limited to carpenters, with an office located at 300 South Ashland, Room 102, Chicago, Illinois 60607.

30. International Brotherhood of Electrical Workers represents more than 140 employees under the jurisdiction of the Governor, including but not limited to electricians, with an office located at 8174 Cass Avenue, Darien, Illinois 60561.

31. Service Employees International Union, Local 1, Fireman and Oilers Division, represents more than 130 employees under the jurisdiction of the Governor, including but not limited to stationary firemen, with an office located at 111 East Wacker Drive, 25th Floor, Chicago, Illinois 60601.

32. International Union of United Food and Commercial Workers represents more than 40 employees under the jurisdiction of the Governor, including but not limited to barbers, with an office located at 10400 West Higgins Road, Suite 500, Rosemont, Illinois 60018.

33. Laborer's International Union of North America represents more than 20 employees under the jurisdiction of the Governor, including but not limited to laborers, with an office located at 8770 West Bryn Mawr Avenue, Suite 1212, Chicago, Illinois 60631.

34. International Association of Machinist and Aerospace Workers represents four employees under the jurisdiction of the Governor, including but not limited to machinists, with an office located at 16W361 South Frontage Road, Suite 127, Burr Ridge, Illinois 60527.

35. International Union of Operating Engineers represents more than 440 employees under the jurisdiction of the Governor, including but not limited to stationary engineers, with an office located at 2260 South Grove Street, Chicago, Illinois 60616.

36. International Union of Painters and Allied Trades represents more than 80 employees under the jurisdiction of the Governor, including but not limited to painters, with an office located at 1456 West Adams Street, Chicago, Illinois 60607.

37. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of U.S.A. and Canada, represents more than 130 employees under the jurisdiction of the Governor, including but not limited to plumbers, with an office located at 45 North Ogden Avenue, Chicago, Illinois 60607.

38. Metropolitan Alliance of Police, Chapter 294, represents over 10 employees under the jurisdiction of the Governor, including but not limited to internal security investigators at the Illinois Department of Corrections, with an office located at 215 Remington Boulevard, Suite C, Bolingbrook, Illinois 60440.

39. International Association of Sheet Metal, Air, Rail, & Transportation Workers (SMART), represents two employees under the jurisdiction of the Governor, including but not limited to tinsmiths, with an office located at 4550 Roosevelt Road, Hillside, Illinois 60162.

40. Illinois Nurses Association represents more than 1,200 employees under the jurisdiction of the Governor, including but not limited to Registered Nurses and correctional nurses, with an office located at 105 West Adams, Suite 1420, Chicago, Illinois 60603.

41. Service Employees International Union, Local 73, represents over 40 employees under the jurisdiction of the Governor, including but not limited to blasting specialists, military security police, and military crash fire and rescue employees, with an office located at 300 South Ashland Avenue, Suite 400, Chicago, Illinois 60607.

42. Laborers' International Union of North America – Illinois State Employees Association, Local 2002 and the Southern and Central Illinois Laborers' District Council, represents over 300 employees under the jurisdiction of the Governor, including but not limited to shift commanders, forensic science administrators, and automotive shop supervisors, with an office located at 534 South 2nd Street, Suite 201, Springfield, Illinois 62701.

43. Illinois Federation of Public Employees, Local 4408, American Federation of Teachers/Illinois Federation of Teachers, represents over 850 employees under the jurisdiction of the Governor, including but not limited to site superintendents, security officers, mechanics, and meat and poultry inspectors, with an

office located at 4 Lawrence Square, Springfield, Illinois 62704.

44. Illinois Federation of Teachers, AFL-CIO Local #919, represents over 40 employees under the jurisdiction of the Governor, including but not limited to teachers at the Illinois School for the Deaf, with an office located at 500 Oakmont Lane, P.O. Box 390, Westmont, Illinois 60559.

45. Conservation Police Lodge, associated with the Illinois Police Benevolent and Protective Association, represents over 100 employees under the jurisdiction of the Governor, including but not limited to conservation police officers, with an office located at 840 South Spring Street, Suite A, Springfield, Illinois 62704.

46. Illinois Fraternal Order of Police – Labor Council represents over 10 employees under the jurisdiction of the Governor, including but not limited to conservation police sergeants, with an office located at 974 Clock Tower Drive, Springfield, Illinois 62704.

47. Troopers Lodge No. 41, Fraternal Order of Police, represents over 1,500 employees under the jurisdiction of the Governor, including but not limited to troopers, special agents, and lieutenants employed at the Illinois State Police, with an office located at 5880 South Sixth Street Road, Springfield, Illinois 62703.

FACTS

I. Common Allegations

A. The Governor's Constitutional Obligations

48. The Governor has the duty to faithfully execute the laws and support the United States and Illinois Constitutions, as recognized in both his sworn oath of office under article XIII, section 3 of the Illinois

Constitution, and in the recognition of his "supreme executive power" in article V, section 8.

49. Accordingly, the Governor is charged with performing his duties so as to protect the First Amendment rights of freedom of expression and association of all people in the State of Illinois. Those duties include an obligation to faithfully support the rights of state employees to engage in, or refrain from, political speech, including speech on issues concerning public sector labor relations.

50. The Governor is also responsible for the State's contracts with the Unions, including the collective bargaining agreements that contain Fair Share Contract Provisions.

B. The Illinois Public Labor Relations Act and Fair Share Contract Provisions

51. Section 6 of the IPLRA, 5 ILCS 315/6, recognizes the rights of covered employees to engage in self-organization and collective bargaining through a chosen representative, or other concerted activities not otherwise prohibited by law, for the purpose of collective bargaining or other mutual aid or protection.

52. Under Section 6 of the IPLRA, a labor union designated "as the representative of the majority of public employees in an appropriate unit in accordance with the procedures herein or recognized by a public employer as the representative of the majority of public employees in an appropriate unit is the exclusive representative for the employees of such unit." 5 ILCS 315/6(c).

53. Section 6 of the IPLRA also recognizes the rights of covered employees to refrain from such activities. 5 ILCS 315/6(a).

54. Under Section 6 of the IPLRA, nonmembers can be required to pay certain fees under Fair Share Contract Provisions. Specifically, Section 6 provides that a collective bargaining agreement may include "a provision requiring employees covered by the agreement who are not members of the organization to pay their proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment." 5 ILCS 315/6(e).

55. Even those nonmembers who object to the payment of the so-called "fair share" fees because of bona fide religious beliefs may nonetheless "be required to pay an amount equal to their fair share, determined under a lawful fair share agreement, to a nonreligious charitable organization mutually agreed upon by the employees affected and the exclusive bargaining representative to which such employees would otherwise pay such service fee." 5 ILCS 315/6(g).

C. CMS's Collective Bargaining Agreements with the Unions

56. CMS has entered into collective bargaining agreements with the Unions containing the Fair Share Contract Provisions described above, with such deductions then paid to the Unions. 5 ILCS 315/6(e); *see, e.g.*, *AFSCME Master Contract 2012-2015*, Art. IV Sec. 3, *available at* http://www2.illinois.gov/cms/Employees/Personnel/Documents/emp_afscme1.pdf (last visited Jan. 30, 2015).

57. The Unions represent over 45,000 state employees collectively, or about 93% of the state employees covered by the Unions' bargaining agreements, including, among others, managers, attorneys, accountants, economists, and actuaries.

58. The fees paid by nonmembers are not to exceed the amount of dues uniformly required by members, and the organizations must certify to the employer that the deductions do not exceed the dues uniformly required by members. 5 ILCS 315/6(e).

59. AFSCME states in a publicly-posted document entitled "Notice to All Nonmember Fair Share Fee Payors" that, among other uses, its "fair share" fees are used for "[l]obbying for the negotiation, ratification or implementation of a collective bargaining agreement," "[p]aying technicians in labor law, economics and other subjects for services used (a) in negotiating and administering collective bargaining agreements, and (b) in processing grievances," "[s]upporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements governing the fair share payor's employment," "[o]rganizing within the bargaining unit in which fair share fee payors are employed," "[o]rganizing other bargaining units," "[s]eeking to gain representation rights in units not represented by AFSCME," and "[l]obbying for purposes other than the negotiation, ratification or implementation of a collective bargaining agreement."[1]

60. AFSCME's fair share fees constitute approximately 79% of the total dues charged to members.

61. ISEA Laborers Local 2002's fair share fees constitute approximately 99% of the total dues charged to members.

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[1] The document entitled "Notice to All Nonmember Fair Share Fee Payors" is attached as Exhibit 1.

62. Teamsters Local 916's fair share fees constitute approximately 98% of the total dues charged to members.

63. Teamsters Downstate's fair share fees constitute approximately 98% of the total dues charged to members.

64. Upon information and belief, the remaining Unions collect fair shares fees that amount to between 79% and 100% of the total dues charged to members.

65. According to recent pay records, approximately 6,582 out of 46,573 Illinois State employees covered by collective bargaining agreements have chosen to be nonmembers yet are compelled to fund the Unions' activities under the Fair Share Contract Provisions.

66. Since 2004, the Unions have negotiated wage increases of approximately 80% during collective bargaining negotiations. By comparison, total inflation over the same time period was approximately 26%, and private sector employee salaries increased by a total of 31%.

67. Under the current collective bargaining agreements negotiated by the Unions, the State pays on average $1,181 per employee for premiums on individual health care coverage, yet requires its employees to contribute only 12% toward the payment of those premiums.

68. Union wages and benefits are largely funded with state general fund revenues, and, therefore, the compensation packages secured by Unions have contributed to a staggering structural budget deficit.

69. Additionally, a state government employee represented by the Unions who earns an average annual salary of $38,979 over the course of a 26-year

state government career contributes approximately $40,539 to the State's pension system, but is entitled to receive $821,588 over a twenty-year retirement, plus retiree health care.

70. In fiscal year 2015, general fund pension costs total over $7.5 billion, which consumes 24% of state-source general fund revenues, and the overall unfunded liability of the pension system is now in excess of $111 billion.

71. As a result of the State's deficits, the State must implement emergency financial measures that could include reduced or eliminated state services, among other consequences.

72. When Unions expend dollars collected pursuant to the Fair Share Contact Provisions to lobby or bargain against reductions to their own benefits packages or to shift more significant reductions to other state programs or services, there is no principled distinction between the Unions and the various special interest groups who must expend money on political activities to protect their own favored programs and services.

73. Indeed, the significant impact that Illinois public sector labor costs have imposed and will continue to impose on the State's financial condition clearly demonstrates the degree to which Illinois state employee collective bargaining is an inherently political activity.

74. When a union collects compulsory fees from an employee, it must annually pro-vide the employee with a "Hudson" notice that, among other things, explains how the union calculated the fee. *See Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). A union calculates a compulsory fee by first defining

which types of activities it will deem "chargeable" and "non-chargeable" to nonmember employees, and by then determining what percentage of the union's expenses in a prior fiscal year were chargeable and non-chargeable. The compulsory fee is set at the prior fiscal year's chargeable percentage.

75. The above calculation must be based on an audit of union expenditures. However, auditors do not confirm whether the union has properly classified its expenditures as chargeable or non-chargeable.

76. If a nonmember disagrees with a union's classification of expenses as chargeable, the nonmember may challenge the classification either through arbitration or in a court of law.

77. On information and belief, rather than sending individual *Hudson* notices to every employee, AFSCME Local 31 posts a "Notice to All Nonmember Fair Share Fee Payors" ("AFSCME Notice") on union bulletin boards in some workplaces.

78. On information and belief, the attached AFSCME's Notice is the current notice posted by AFSCME Council 31, and is the basis for the compulsory fees it collected in 2014 and through 2015 to date. Also on information and belief, the attached AFSCME Notice accurately describes AFSCME Council 31's compulsory fee, its calculation thereof, and the union's policies related to those fees.

D. Unconstitutionality of Fair Share Contract Provisions

79. In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the United States Supreme Court considered and approved "fair share" provisions under a public sector labor contract. But since *Abood*, the

Supreme Court has repeatedly recognized that compelling a state employee to financially support a public sector union seriously impinges upon the free speech and association interests protected by the First Amendment.

80. The Supreme Court in *Abood* distinguished between "chargeable" union expenditures, which may be recouped even from employees who choose not to join a union, and "non-chargeable" expenditures, which can be recouped only from the union's members.

81. But in the years following the *Abood* decision, the Supreme Court "struggled repeatedly with" interpreting *Abood* and determining what qualified as a "chargeable" expenditure and what qualified as a "non-chargeable," or political and ideological, expenditure. *Harris v. Quinn*, U.S. , 134 S. Ct. 2618, 2633 (2014) (citing *Ellis v. Railway Clerks*, 466 U.S. 435 (1984); *Teachers v. Hudson*, 475 U.S. 292 (1986); *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991); *Locke v. Karass*, 555 U.S. 207 (2009)).

82. In addition, in *Knox v. Service Employees International Union, Local 1000*, __ U.S. __ ,132 S. Ct. 2277, 2289 (2012), the Supreme Court also recognized that "a public-sector union takes many positions during collective bargaining that have powerful political and civic consequences." For that reason, "compulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights." *Id.* (internal quotation marks omitted). *Knox* emphasized the "general rule" that "individuals should not be compelled to subsidize private groups or private speech." *Id.* at 2295.

83. Most recently, in *Harris v. Quinn*, the Supreme Court held that "fair share" contract provisions

entered into under the IPLRA that required non-union Medicaid-funded home-care personal assistants to pay fees to the union violated the First Amendment, because the provisions served no compelling state interest that could not be achieved through significantly less restrictive means. *See Harris*, 134 S. Ct. at 2640.

84. Even though *Harris* did not involve the employees represented by the Unions in this suit, a majority of the Supreme Court disagreed with the legal and factual bases of *Abood*'s ruling that state employees may be compelled to pay "fair share" fees, such as those required by the Fair Share Contract Provisions.

85. Regarding the "fair share" provisions at issue in that case, the *Harris* majority noted that "'[t]he primary purpose' of permitting unions to collect fees from nonmembers . . . is 'to prevent nonmembers from free-riding on the union's efforts, sharing the employment benefits obtained by the union's collective bargaining without sharing the costs incurred.'" *Harris*, 134 S. Ct. at 2627 (quoting *Knox*, 132 S. Ct. at 2289). The Court continued, however, that "'[s]uch free-rider arguments . . . are generally insufficient to overcome First Amendment objections.'" *Harris*, 134 S. Ct. at 2627 (quoting *Knox*, 132 S. Ct. at 2289).

86. A majority of the Supreme Court also recognized in *Harris* that "fair share" provisions in public employee collective bargaining agreements impose First Amendment concerns not necessarily presented in the private sector, because the collective bargaining process *itself* is political when taxpayer funds go to pay the negotiated wages and benefits, especially given the great power of unions in electoral politics and the size of public employee payrolls. In coordination with their

express political advocacy, the Unions routinely take positions in the collective-bargaining process that greatly affect the State's budget.

87. Since *Abood* and since the inception of Illinois public-sector bargaining in 1984 under IPLRA, the facts and circumstances of Illinois public-sector bargaining have caused the Fair Share Contract Provisions to impose a significant infringement on the First Amendment rights of Illinois state employees who do not wish to become members of the Unions.

88. Like the petitioners in *Harris*, the nonmembers in Illinois have "the right not to be forced to contribute to the union, with which they broadly disagree." *Harris*, 134 S. Ct. at 2640.

E. Executive Order 15-13

89. In light of the developments in the Supreme Court regarding the constitutionality of Fair Share Contract Provisions, the Governor has therefore concluded that these provisions, while permitted by the IPLRA, are nonetheless unconstitutional because they significantly infringe on nonmember Illinois state employees' First Amendment rights, while serving no compelling state interest that cannot be achieved through means significantly less restrictive of associational and expressive freedoms.

90. There is no justification, much less a compelling one, for mandating that the nonmembers support the Unions, which are some of the most powerful and politically active organizations in the State.

91. In addition, the inherently political nature of collective bargaining and its consequences in Illinois have further infringed on nonmembers' First Amendment rights to refrain from supporting public sector

unions in their organization and collective bargaining activities. Therefore, the First Amendment forbids coercing any money from the nonmembers to pay fees pursuant to Fair Share Contract Provisions.

92. Under article V, section 8 and article XIII, section 3 of the Illinois Constitution, the Governor is charged with performing his duties so as to protect the First Amendment rights of freedom of expression and association of all people in the State of Illinois. Because deducting fees pursuant to the Fair Share Contract Provisions is unconstitutional under the First Amendment, the Governor has determined that he cannot continue deducting these fees without violating his oath of office and duty to protect the First Amendment rights of all people in the State of Illinois.

II. Employees' Allegations

A. Employee Plaintiffs Are Forced to Pay Compulsory Union Fees Pursuant to State Law and Union Contracts.

93. Section 6 of IPLRA, 5 ILCS 315/6, grants a designated or recognized union the legal authority to act as "the exclusive representative for the employees of [a bargaining] unit for the purpose of collective bargaining with respect to rates of pay, wages, hours and other conditions of employment not excluded by Section 4 of this Act." 5 ILCS 315/6(c). These terms and conditions of employment include, among other things, health care coverage, retirement benefits, and pensions.

94. The mandatory and permissive subjects of collective bargaining under the IPLRA concern matters of political and public concern over which employees and other citizens may have divergent views and opinions.

95. The State, by and through CMS, directly deducts compulsory fees, in the amount set by a union, from the earnings of State employees and remits those monies to the union. The Unions here act under color of state law by causing, participating in, and accepting the compulsory deduction of fees from monies owed to nonmember State employees.

96. On information and belief, exclusive representation is not necessary to maintain order and peace amongst employees in public workplaces because, among other things, public employers have other means to ensure workplace discipline.

97. On information and belief, exclusive representation assists unions with recruiting and retaining members because, among other things: employees are more likely to join and support a union that has authority over their terms of employment, as opposed to a union that does not; exclusive representatives are entitled to information about all employees in the unit; and exclusive representatives can negotiate contract terms that facilitate recruiting and retaining members, such as contract terms requiring mandatory union orientations for all employees and automatic deduction of union dues from employees' paychecks.

98. Section 6(e) of the IPLRA provides that:

> When a collective bargaining agreement is entered into with an exclusive representative, it may include in the agreement a provision requiring employees covered by the agreement who are not members of the organization to pay their proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment,

> as defined in Section 3(g), but not to exceed the amount of dues uniformly required of members. The organization shall certify to the employer the amount constituting each nonmember employee's proportionate share which shall not exceed dues uniformly required of members. In such case, the proportionate share payment in this Section shall be deducted by the employer from the earnings of the nonmember employees and paid to the employee organization.

5 ILCS 315/6(e). The union fee seizures authorized by § 6(e) of the IPLRA shall hereinafter be referred to as "compulsory fees."

99. The State, acting through CMS, is a party to a collective bargaining agreement with AFSCME Council 31 effective from June 30, 2012 to June 30, 2015, which is incorporated by reference herein.[2] The contract requires semi-monthly deduction of compulsory fees from the earnings of nonmember employees. *Id.* at Art. IV, § 3.

100. The State, acting through CMS, is a party to a collective bargaining agreement with Teamsters Local 916 effective from June 30, 2012 to June 30, 2015, which is incorporated by reference herein.[3] The contract requires that compulsory fees be deducted from the earnings of nonmember employees. *Id.* at Art. III, § 1.

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[2] The document is available at http://www2.illinois.gov/cms/Employees/Personnel/Documents/emp_afscme1.pdf (last visited Mar. 16, 2015), and is attached as Exhibit 2.

[3] The document is available at http://www2.illinois.gov/cms/Employees/Person...el/Documents/emp_pt916.PDF (last visited Mar. 16, 2015), and is attached as Exhibit 3.

101. Since times before June 30, 2012, the Employees have had compulsory fees deducted from their earnings pursuant to the aforementioned contracts.

102. Janus currently has $23.48 deducted from his paycheck every pay period, and estimates that several thousand dollars of compulsory fees have been deducted in total.

103. Quigley currently has approximately $19.75 deducted from her paycheck every pay period, and estimates that approximately $1,660 of compulsory fees have been deducted in total.

104. Trygg currently has $60.86 deducted from his paycheck every pay period, and estimates that approximately $7,100 of compulsory fees have been deducted in total.

105. Section 6(f) of the IPLRA requires that "[w]here a collective bargaining agreement is terminated, or continues in effect beyond its scheduled expiration date pending the negotiation of a successor agreement . . . the employer shall continue to honor and abide by any dues deduction or fair share clause contained therein until a new agreement is reached including dues deduction or a fair share clause." 5 ILCS 315/6(f).

106. Accordingly, Illinois law requires that the Employees continue to pay compulsory fees to AFSCME Council 31 and Teamsters Local 916 after the aforementioned contracts expire.

107. On information and belief, compulsory fees are not necessary to maintain order or labor peace in the workplace, because, among other reasons, exclusive

representation does not depend on the right to collect a fee from non-members.

B. The Employees Oppose Being Forced to Pay Compulsory Fees to the Unions.

108. Janus objects to many of the public-policy positions that AFSCME advocates, including the positions that AFSCME advocates for in collective bargaining.

109. For example, he does not agree with what he views as the union's one-sided politicking for only its point of view. Janus also believes that AFSCME's behavior in bargaining does not appreciate the current fiscal crises in Illinois and does not reflect his best interests or the interests of Illinois citizens.

110. But for Illinois law requiring compulsory fees, Janus would not pay any fees or otherwise subsidize AFSCME.

111. Quigley also objects to many of AFSCME's public-policy positions, including the positions that AFSCME advocates for in collective bargaining.

112. For example, she disagrees with AFSCME's negotiation of contract terms that favor seniority over employee merit for purposes of layoffs and promotions, is concerned about the effect that AFSCME's bargaining behavior is having on the Illinois budget, believes that union representatives are only looking out for themselves at the expense of union members and the people of Illinois, and does not believe that AFSCME is acting in her best interest or in the best interests of Illinois citizens.

113. But for Illinois law requiring compulsory fees, Quigley would not pay any fees or otherwise subsidize AFSCME.

114. Trygg objects to many of Teamsters Local 916's public-policy positions, including the positions that it advocates for in collective bargaining.

115. Trygg has sincere religious objections to associating with Teamsters Local 916 and its agenda. Trygg also believes that Teamsters Local 916 harms Illinois residents by objecting to efforts by the State to reduce costs that would allow public funds to be made available for more important uses. For example, the Union resists any furlough days, despite the State's budget issues.

116. But for Illinois law requiring compulsory fees, Trygg would not pay any fees or other subsidize Teamsters Local 916.

III. Governor's Executive Action

117. An actual controversy currently exists between the parties concerning the constitutionality of the Fair Share Contract Provisions and the legality of the Governor's Executive Order ceasing such deductions.

118. Article V, section 8 of the Illinois Constitution says that "[t]he Governor shall have the supreme executive power" of the State of Illinois. That power includes the authority to select and direct agency leaders, including the head of CMS. For purposes of the Illinois Public Labor Relations Act [5 ILCS 315/6], employees who have the right to "join or assist any labor organization, to bargain collectively" are "[e]mployees of the State." They are also considered employees of the State of Illinois for payroll purposes. The agencies they work for are similar to divisions of a company. Their employer is still the State of Illinois.

119. As the State's chief executive, the Governor has delegated the authority to bargain with the labor

unions to the labor division of CMS, but his office still directs those negotiations and makes final decisions on all material terms in the agreement. CMS does not have the authority to agree to final terms without the Governor's approval.

120. The decision to no longer comply with a term of the contract was the Governor's. The Governor directed State Agencies to no longer comply, and they did not have any discretion because the Governor has the "supreme executive power."

121. Executive Order 15-13 renders null and void certain provisions in the collective bargaining contracts between CMS and Defendants. CMS's obedience to Executive Order 15-13 necessarily creates a controversy with Defendants, which will no longer receive these payments. That controversy exists without limitation by virtue of the federal question concerning the constitutionality of Executive Order 15-13, the injury suffered to the office of the Governor from any legal effort to curtail the Governor's exclusive power to issue Executive Orders, and the Governor's status as an employer in the State of Illinois.

122. Executive Order 15-13 is based on the unconstitutionality of the Fair Share Contract Provisions. The Order is in direct conflict with the terms of Defendants' collective bargaining agreements, which require the continued deduction and remittance of those fees. This controversy is substantial, between parties having adverse legal interests, and sufficiently real and immediate to warrant the issuance of a declaratory judgment.

123. The Defendants have already sued the Governor to demonstrate the existence of the ongoing

controversy. That lawsuit has been filed in the Circuit Court of Illinois, St. Clair County and is incorporated herein by reference. That lawsuit demonstrates both the existence of a case or controversy as well as an injury specific to the Governor as the State's supreme executive and status as an employer.[4]

124. Because Executive Order 15-13 renders null and void certain provisions within the collective bargaining contracts between CMS and all Defendants, and because those provisions purported to impose upon CMS the obligation to make payroll deductions and remittances to Defendants for the benefit of Defendants, CMS's required obedience to Executive Order 15-13 necessarily entails a controversy between Defendants and the Governor, by virtue of CMS being an agency reporting to the Governor.

125. The Governor has a substantial legal interest in resolving such a controversy immediately in order to expeditiously achieve finality and certainty that will, among other things:

a Establish the lawfulness of Executive Order 15-13, an order uniquely within the purview of Illinois' chief executive;

b Prevent potentially costly distractions to CMS personnel, to bargaining unit personnel ultimately reporting to the Governor who are affected by Executive Order 15-13, and to other Executive Branch personnel reporting to the Governor, resulting from a protracted and public dispute between the

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[4] The Verified Complaint for Declaratory and Injunctive Relief, dated March 5, 2015, is attached as Exhibit 4.

Governor and Defendants regarding the legal validity of Executive Order 15-13;

c Prevent the possible unnecessary expense and inefficiency that could result from an extended period in which the Executive Branch commits itself to the implementation of Executive Order 15-13, only to have its validity thrown into question by multiple challenges from the various separate and independent Defendant unions;

d Establish the validity of Executive Order 15-13 so as to insulate Executive Branch employees in agencies reporting to the Governor from any wrongful assertions by Defendants that such employees still individually owe fair share amounts because Defendants do not recognize Executive Order 15-13;

e Prevent lawsuits or threatened liability against the employees of the Governor or state agencies;

f Obtain certainty whether the Governor's non-performance under the otherwise clear terms of the contracts with the Unions is lawful.

126. There is a direct conflict between the Governor's Executive Order 15-13 and the Fair Share Contract Provisions in all of Defendants' collective bargaining agreements, and a present concrete disagreement between the Governor and Defendants regarding the application of the First Amendment to Fair Share Contract Provisions.

127. For example, Defendants AFSCME and Service Employees International Union, Local 73 have publicly announced their position that Fair Share Contract Provisions are constitutional under the First Amendment as interpreted by *Abood*. Thus, AFSCME's and Service Employees International Union, Local 73 have a concrete disagreement with the Governor on the basis for Executive Order 15-13.

128. Specifically, Defendants AFSCME and Service Employees International Union, Local 73 argued to the United States Supreme Court in *Harris v. Quinn* that the First Amendment permits "fair share" fees charged to public sector workers who do not wish to be union members. AFSCME claimed that a system including "fair share" fees had a "limited" "impact on public employees' First Amendment rights"; that such "fees serve the government's significant interests"; and that the "burdens of the system are minimized by limits . . . to costs germane to contract negotiation and administratio[illegible]" Brief of Respondent SEIU Healthcare Illinois & Indiana, *Harris v. Quinn*, No. 11-681, 2013 WL 6805686, at *10-11 (U.S. Dec. 23, 2013), expressly incorporated by reference within Brief for Respondents AFSCME Council 31 and SEIU Local 73, *Harris v. Quinn*, No. 11-681, 2013 WL 6805687, at *2 (U.S. Dec. 23, 2013).

129. On information and belief, officers of Defendants AFSCME and other Defendants have made public statements criticizing the Supreme Court's First Amendment analysis in *Harris v. Quinn*, further indicating the concrete disagreement that exists between Defendants and the Governor on the application of the First Amendment and the constitutional basis for Executive Order 15-13.

GOVERNOR'S COUNT I

Declaratory Judgment Of Legality Of Executive Order 15-13

130. The Governor incorporates by reference each and every allegation set forth in the preceding paragraphs of this Complaint as though fully realleged here.

131. An actual controversy exists between the parties. This Court has jurisdiction to enter a declaratory judgment concerning the respective rights and duties of the parties.

132. The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech."

133. The Fourteenth Amendment to the United States Constitution incorporates the protections of the First Amendment against the States: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

134. Enforcing the Fair Share Contract Provisions would require the Governor to violate his duty to uphold both the United States and Illinois Constitutions.

135. As Unions will no longer receive payments to which they are purportedly entitled under the IPLRA and various collective bargaining agreements, a clear controversy exists between the parties regarding their respective obligations under the collective bargaining agreements.

136. Further, the Governor has a substantial legal interest in resolving these issues expeditiously in order to: (a) avoid unnecessary and costly expenses and distractions; and (b) establish the validity of Executive Order 15-13. Several of the Unions have already sued the Governor alleging that Executive Order 15-13 is unlawful under Illinois law and seeking prospective injunctive relief regarding the administration of the Fair Share Contract Provisions.

137. It is necessary and proper under the circumstances alleged herein that this Court adjudicate and declare that: (a) the Fair Share Contract Provisions, as required under the IPLRA, impose a significant infringement on Illinois State employees' First Amendment rights and serve no compelling State interest that cannot be achieved through means significantly less restrictive of associational freedoms; (b) the Governor's Executive Order 15-13 ceasing deduction and remittance of Fair Share Contract Provision fees is within the Governor's powers under the Article V, Section 8, or other provisions of the Illinois Constitution; and (c) the Governor's Executive Order 15-13 is lawful under Illinois law.

138. The Governor has no adequate remedy at law.

GOVERNOR'S COUNT II

Declaratory Judgment Of Impossibility
Of Contractual Performance

139. The Governor incorporates by reference each and every allegation set forth in the preceding paragraphs of this Complaint as though fully realleged here.

140. The Governor through his agencies, including CMS, has entered into Collective Bargaining Agreements with the Defendants containing Fair Share Contract Provisions.

141. The Collective Bargaining Agreements are valid and binding agreements.

142. The terms of the Collective Bargaining Agreements are unambiguous and the obligations regarding implementation of the Fair Share Contract Provisions are clear.

143. Abiding by the Fair Share Contract Provisions of the Collective Bargaining Agreements would require the Governor to violate the United States Constitution.

144. The Governor is unable to implement the Fair Share Contract Provisions under the Collective Bargaining Agreements because those provisions are unconstitutional.

145. The Governor is entitled to a declaration that performance under the contract is impossible and his non-performance of the Fair Share Contract Provisions is therefore excused.

GOVERNOR'S PRAYER FOR RELIEF

WHEREFORE, the Governor respectfully requests that this Court enter an order declaring that:

(1) The Fair Share Contract Provisions under the IPLRA are unconstitutional under the First Amendment of the United States Constitution; and

(2) The Governor's Executive Order 15-13 is within the Governor's powers under the Illinois constitution.

(3) The Governor's performance under its Collective Bargaining Agreements with the Defendants is impossible because of the unconstitutionality of the Fair Share Contract Provisions, and the Governor's non-performance under the Collective Bargaining Agreements is therefore excused.

The Governor further respectfully requests that the Court grant any other relief to the Governor that the Court deems just and proper.

EMPLOYEES' CLAIMS FOR RELIEF

146. The Plaintiffs reallege and incorporate by reference the paragraphs set forth above.

147. Compulsory fees infringe on the First Amendment rights of the Intervenors and other employees because compulsory fee requirements compel employees to support speech and petitioning against their will, and to associate with a union against their will.

148. "[C]ompulsory subsidies for private speech are subject to exacting First Amendment scrutiny and cannot be sustained unless two criteria are met. First, there must be a comprehensive regulatory scheme involving a 'mandated association' among those who are required to pay the subsidy." *Knox v. SEIU*, 132 S. Ct. 2277, 2289 (2012) (citation omitted). "Such situations are exceedingly rare because . . . mandatory associations are permissible only when they serve a compelling state interest . . . that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* (citation omitted).

149. "Second, even in the rare case where a mandatory association can be justified, compulsory fees can be levied only insofar as they are a 'necessary incident' of the larger regulatory purpose which

justified the required association.'" *Id.* (citation omitted).

150. In *Abood v. Detroit v. Board of Education*, 431 U.S. 209 (1977), the Supreme Court held the seizure of compulsory fees in the public sector to be constitutional because the fees were justified by state interests in labor peace and avoiding free riders. However, the *Abood* court failed to subject these ostensible justifications to aforementioned requisite constitutional scrutiny.

151. In *Harris v. Quinn*, 134 S. Ct. 2618, 2632 (2014), a majority of the Supreme Court questioned *Abood*'s continued validity on several grounds.

152. The Plaintiffs submit that *Abood* was wrongly decided, should be overturned by the Supreme Court, and that the seizure of compulsory fees is unconstitutional under the First Amendment. Among other things, no compelling or otherwise sufficient state interest justifies compulsory fees.

EMPLOYEES' COUNT I

Compulsory Union Fees Violate 42 U.S.C. § 1983
And The United States Constitution

153. By requiring under color of state law that the Employees pay compulsory fees as a condition of their employment, the State, AFSCME Council 31, and Teamsters Local 916 are violating the Employees' First Amendment rights to free speech, petitioning, and association, as secured by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

154. As a result, the Employees are suffering the irreparable harm and injury inherent in a violation of First Amendment rights for which there is no

adequate remedy at law. Unless enjoined by this Court, the Employees will continue to suffer irreparable harm and injury.

155. The following Illinois laws that authorize compulsory fees are unconstitutional, both on their face and as applied to the Employees: 5 ILCS 315/3(g), ILCS 315/6(a) (final sentence only), 5 ILCS 315/6(e), 5 ILCS 315/6(f), 315/10(a)(2) (final sentence only), and 5 ILCS 315/10(b)(1) (reference to "fair share" only).

EMPLOYEES' COUNT II

Declaratory Judgment That EO 15-13 Is Constitutional

156. Executive Order 15-13 requires that the State no longer infringe on the First Amendment rights of the Employees and similarly situated employees in the manner described in Count I. The Employee Plaintiffs seek a declaratory judgment that EO 15-13 is constitutional and that the Governor has the lawful authority to enact and implement EO 15-13.

EMPLOYEES' PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

a. Issue a declaratory judgment against the State, AFSCME Council 31, and Teamsters Local 916 that:

   i. it is unconstitutional under the First Amendment, as secured against State infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, to seize or require payment of compulsory fees from the Employees and other public employees; and

ii. the following statutory provisions are unconstitutional under the First Amendment, as secured against State infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, and are null and void: ILCS 315/3(g), ILCS 315/6(a) (final sentence only), 5 ILCS 315/6(e), 5 ILCS 315/6(f), 315/10(a)(2) (final sentence only), and 5 ILCS 315/10(b)(1) (reference to "fair share" only).

iii. The sections of AFSCME Council 31 and Teamsters Local 916's contracts with the State that require the seizure of compulsory fees are unconstitutional under the First Amendment, as secured against State infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, and are null and void.

b. Issue preliminary and permanent injunctions against the State, AFSCME Council 31, and Teamsters Local 916 that prohibit the parties from seizing compulsory fees from the Employees or otherwise requiring that they pay compulsory fees to a union as a condition of their employment.

c. Award Employees Mark Janus, Marie Quigley nominal and compensatory damages from AFSCME Council 31, and award Employee Brian Trygg nominal and compensatory damages from Teamsters Local 916, for all compulsory fees seized from them under color of state law from the beginning of the applicable statute of limitations to the date of the said award.

d. Pursuant to 42 U.S.C. § 1988, award Plaintiffs their costs, including reasonable attorneys' fees incurred in the litigation of this case.

e. Order any other legal or equitable relief deemed just and proper.

Dated: March 26, 2015

Respectfully submitted,

BRUCE RAUNER

By: /s Matthew R. Ford

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* Pro Hac Vice Motions to Be Filed

Counsel for Plaintiffs Mark Janus, Marie Quigley, and Brian Trygg

CERTIFICATE OF SERVICE

I, Matthew R. Ford, an attorney, hereby certify that on March 26, 2015, I caused the foregoing FIRST AMENDED COMPLAINT to be filed electronically with the Court via CM/ECF. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

By: /s Matthew R. Ford

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 15 C 1235

BRUCE RAUNER, Governor of the State of Illinois,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, AFL-CIO, *et al.*,

Defendants.

Judge Robert W. Gettleman

MEMORANDUM OPINION AND ORDER

Plaintiff Bruce Rauner, Governor of the State of Illinois (the "Governor"), has sued defendant American Federation of State, County, and Municipal Employees, Council 31, AFL-CIO, along with 24 other labor organizations representing state employees (the "Unions"), seeking a declaration that the "fair share contract provisions" under the Illinois Public Labor Relations Act ("IPLRA"), 5 ILCS 315/6(e), are unconstitutional, and that his Executive Order 15-13, which directed the Illinois Department of Central Management Services ("CMS") not to comply with the statute and any collective bargaining agreement provisions authorized by the statute, is enforceable. The defendant Unions and Lisa Madigan, Attorney General of the State of

Illinois who intervened as a defendant, have each moved to dismiss for lack of subject matter jurisdiction and standing, and for failure to state a claim. While those motions were being briefed, three non-Union member public employees, Mark Janus, Marie Quigley and Brian Trygg (the "Employees"), sought to intervene as plaintiffs. Shortly thereafter, the Governor filed a first amended complaint adding the proposed Employee interveners as plaintiffs. The Governor also filed a motion to confirm the first amended complaint and a motion to dismiss as moot the defendant Unions' and Madigan's motions to dismiss the original complaint. Concerned about whether the court had subject matter jurisdiction, it ordered supplemental briefing on that issue. Those briefs have been filed and, for the reasons described below, the court grants the Employees' motion to file a complaint in intervention, dismisses the original complaint and the first amended complaint for lack of subject matter jurisdiction and standing, and the case will proceed with the Employees' proposed intervening complaint as the operative complaint.

BACKGROUND

The IPLRA provides that a labor organization chosen by the majority of public employees in a bargaining unit, "is the exclusive representative for the employees of such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours and other conditions of employment." 5 ILCS 315/6(c). Public employees are not required to join the labor organization, § 315/6(a), but the labor organization is "responsible for representing the interests of all public employees in the unit." 5 ILCS 315/6(d). To help cover the cost of that representation, the organization "may include in its collective bargaining agreement a

provision requiring employees covered by the agreement who are not members of the organization to pay their proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment . . .." (The "fair share provisions"). 5 ILCS 315/6(e). The IPLRA requires state agencies to honor such fair share provisions by deducting the proportionate amount from the non-member employees' earnings and paying it to the labor organization. *Id.* The Act further provides that it and the provisions of any collective bargaining agreement negotiated under the Act prevail and control over any other law or executive order. 315 ILCS/15(a). The defendant Unions in the instant case have all entered collective bargaining agreements with CMS. Each of those agreements has a fair share provision.

DISCUSSION

In his initial complaint, the Governor sought a declaration that the section of the IPLRA that provides for fair share provisions violates the First Amendment. The Governor asserted that the court had subject matter jurisdiction under 28 U.S.C. § 1331, claiming that the case "arises under the United States Constitution." Both Madigan and the Unions moved to dismiss, arguing that the case does not arise under federal law and that the Governor lacks standing to bring the claims.

Perhaps recognizing his tenuous position regarding subject matter jurisdiction, rather than respond to the motions the Governor began a series of procedural maneuvers obviously designed to establish jurisdiction. First, the Employees (undoubtedly with the Governor's blessing), who can unquestionably assert subject matter jurisdiction and have standing to bring

their attack on the constitutionality of the fair share provisions, moved to intervene. Three days later the Governor filed his first amended complaint adding those same Employees as plaintiffs. Recognizing, however, that he must have leave of court to add party plaintiffs under Fed. R. Civ. P. 21, he also moved for an order confirming the amended complaint and, assuming he was to receive that order, he seeks to dismiss Madigan's and the Unions' motions to dismiss the original complaint as moot because subject matter jurisdiction over the amended complaint is based on the Employees' claims. Whether the Governor's maneuvering is necessary, and if so, successful, depends in the first instance on whether the court has subject matter jurisdiction over the case based on the initial complaint. As discussed below, it does not.

The initial complaint was brought under the Declaratory Judgment Act, 28 U.S.C. § 2201, which allows a party who expects to be sued "to determine his rights and liabilities without waiting for his adversary, the presumptive plaintiff, to bring suit." *DeBartolo v. Healthsouth Corp.*, 569 F.3d 736, 741 (7th Cir. 2009). The Act is not an independent grant of federal subject matter jurisdiction, however, "so jurisdiction depends on the nature of the anticipated claims." *Id.* "Thus, although the presence or absence of a federal question normally turns on an examination of the face of the plaintiff's complaint, in an action for declaratory judgment the positions of the parties are reversed: the declaratory-judgment plaintiff would have been the defendant in the anticipated suit whose character determines the district court's jurisdiction." *Id.* (citations omitted).

In the instant case, the only federal issue identified in the Governor's initial complaint is whether the fair

share provisions violate the First Amendment. That issue would arise only as a defense to an anticipated suit by the Unions against CMS: (1) to enforce the fair share provisions should CMS comply with Executive Order 15-13; and (2) to set aside the Executive Order as inconsistent with the IPLRA. The issues raised in that hypothetical suit are all based on state law (breach of contract and state statute). Thus, the court would not have subject matter jurisdiction over the case, because the existence of a federal defense "is inadequate to confer jurisdiction," *Merrell-Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 808 (1986), even if the constitutional defense is the only real issue in the case. *Caterpillar Inc. v. Williams*, 483 U.S. 386, 393 (1987). Consequently, the court concludes that it lacks subject matter jurisdiction over the initial complaint.

The Governor also lacks standing to challenge the constitutionality of the fair share provisions of the IPLRA. It is the Governor's burden to establish standing, by showing that he has suffered an injury in fact that is fairly traceable to the actions of the defendants and is redressable by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). To establish an injury in fact, the Governor must suffer an invasion of a legally protectable interest that is concrete and particularized such that it affects him in a personal and individual way. *Id.* at 560 n.1. To challenge the fair share provision, he must show that "he has sustained or is in danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." *Id.* at 574 (internal citations and quotations omitted). Thus, state officials generally lack standing to challenge the constitutionality of state law in federal court where their interests are official as opposed to where their

interest's are personally adversely affected. *See Finch v. Miss. State Med. Ass'n, Inc.*, 585 F.2d 765, 769 (5th Cir. 1978) (Governor lacked standing to challenge constitutionality of state statute on ground that he believed it violated the Fourteenth Amendment because "[h]e has no personal stake in the outcome of the case; he will not be affected favorably by a decision that the statute is unconstitutional nor adversely by a decision that it is valid.").

In the instant case, the Governor has no personal interest at stake. He is not subject to the fair share fees requirement. Instead, he essentially claims to have a duty to protect the First Amendment rights of all public employees in the state. These are obviously official rather than personal interests, and indeed he has brought the suit in his official capacity. In effect, he seeks to represent the non-member employees subject to the fair share provisions of the collective bargaining agreements. He has no standing to do so. They must do it on their own.

The Governor argues, however, that it is his first amended complaint that governs the court's jurisdictional inquiry. Fed. R. Civ. P. 15(a)(1)(B) provides that a party may amend his pleading once as a matter or course within 21 days after service of a responsive pleading or 21 days after serve of a motion under Rule 12(b), (e) or (f), whichever is earlier. "Amendments as of right under Rule 15(a) operate 'as a matter of course' and do not require a judicial imprimatur. *Connectu LLC v. Zuckerberg*, 522 F.3d 82, 95 (1st Cir. 2008). When a plaintiff amends the complaint as of right the rules apply mechanically and the court's authority over the case is not brought to bear. *Id.* at 96. The amended complaint replaces "the original complaint lock, stock and barrel." *Id.* at 91. "Thus, when a

plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction." *Rockwell Intern. Corp. v. U.S.*, 549 U.S. 457, 473-74 (2007).

The Governor's first amended complaint was timely filed as of right within 21 days of the Unions' first motion to dismiss. Because they are being assessed the fair share fees, the Employees obviously have standing to challenge the constitutionality of the fair share provision in the IPLRA. Thus, the court would have subject matter jurisdiction over their claims if they are properly before the court. The Governor argues that the court should then exercise supplemental jurisdiction over his claims under 28 U.S.C. § 1367(a).

There is a fallacy in the Governor's argument, and it is a big one. Although he has an absolute right to file an amended complaint without court order, he concedes that under Rule 21 and controlling Seventh Circuit precedent, he needs leave of court to add the Employees as plaintiffs. "Although Federal Rule of Civil Procedure 15(a) permits a party to freely amend its complaint in a timely fashion, Federal Rule 21 requires a court order to add or drop parties." *Ed Miniat, Inc. v. Globe Life Ins. Group, Inc.*, 805 F.2d 732, 736 (7th Cir. 1986): *see also Velyov v. Frontier Airlines*, 2014 WL 1379920, at *1 (E.D. Wis. April 7, 2014)(despite amending within 21 days of service "leave of Court is required to add a new Defendant."); *Williams v. U.S. Postal Service*, 873 F.2d 1069, 1072-73 n.2 (7th Cir. 1989)(a plaintiff cannot add new parties through a complaint amended as a matter of course.).

The Governor correctly argues that leave to add or drop parties under Rule 21 should be freely granted, and that even in *Ed Miniat* the court stated that

failure to obtain leave of court prior to filing the amended complaint adding plaintiffs was a correctable error. *Ed Miniat*, 805 F.2d at 736. But the *Ed Miniat* court had already determined that the original plaintiffs had standing to assert their claims and the district court had subject matter jurisdiction. Thus, there was no jurisdictional impediment to correcting the procedural error.

In the instant case, however, the court has determined that the original plaintiff, the Governor, lacks standing and the court lacks subject matter jurisdiction over the case. Thus, it has no power to enter an order allowing the addition of the employees as plaintiffs. And, even if the court could allow the Employees to join as additional plaintiffs, it cannot assert supplemental jurisdiction over the Governor's claims, having already determined that he lacked standing to bring them.

That leaves only the Employees' motion to intervene and file their proposed intervening complaint as a potential savior to the action. Obviously, the court cannot allow the Employees to intervene in the Governor's original action because there is no federal jurisdiction over his claims. As a general rule, a party cannot intervene if there is no jurisdiction over the original action. "An existing suit within the court's jurisdiction is a prerequisite of an intervention, which is an ancillary proceeding in an already instituted suit." *Hofheimer v. McIntee*, 179 F.2d 789, 792 (7th Cir. 1950). As the Second Circuit recently stated in *Disability Advocates, Inc. v. NY Coalition for Quality Assisted Living, Inc.*, 675 F.3d 149, 160 (2d Cir. 2012)(internal quotations and citations omitted):

> The logic that underlies this rule is clear enough. Intervention is a procedural means

> for entering an existing federal action. The Federal Rules of Civil Procedure "do not extend or limit the jurisdiction of the district courts." Fed. R. Civ. P. 82. That is, Rule 24 does not itself provide a basis for jurisdiction. Accordingly, since intervention contemplates an existing suit and a court of competent jurisdiction and because intervention is ancillary to the main cause of action, intervention will not be permitted to breathe life into a "nonexistent lawsuit."

Thus, the Employees' intervention cannot "cure" the problem with the original complaint. Nonetheless, as the Unions acknowledge, some courts have recognized that "where the intervening party brings separate claims, and the district court has an independent basis to exercise jurisdiction over those claims," the district court may "dismiss the original claims in the action for lack of subject matter jurisdiction while retaining jurisdiction over the intervener's claims only." *Village of Oakwood v. St. Bank and Trust Co.*, 481 F.3d 364, 367 (6th Cir. 2007). "A court has discretion to treat pleadings of an intervener as a separate action to adjudicate claims raised by the intervener." *Miller & Miller Auctioneers, Inc. v. G.W. Murphy Indus., Inc.*, 472 F.2d 893, 895 (10th Cir. 1973). The court has this discretion even if there is no subject matter jurisdiction over the original action. *See Fuller v. Volk*, 351 F.2d 323, 328-29 (3rd Cir. 1965). ("This discretionary procedure is properly utilized in a case in which it appears that the intervener has a separate and independent basis for jurisdiction and in which failure to adjudicate the claim will result only in unnecessary delay. By allowing the suit to continue with respect to the intervening party, the court can avoid the senseless delay and expense of a new suit, which at

long last will merely bring the parties to the point where they now are.").

The Employees' proposed complaint in intervention asserts an independent basis for the court's jurisdiction. They undoubtedly have standing to assert their claims because they are required under the IPLRA to pay fair share fees. Therefore, in the interest of judicial economy, the court grants leave for the Employees to file their complaint in intervention and treats it as the operative pleading, while simultaneously dismissing the Governor's original complaint.

CONCLUSION

For the reasons explained above, the Employees' motion to file their complaint in intervention (Doc. 91) is granted and the complaint will be treated as the operative complaint in this action. The Unions' and Madigan's motions to dismiss the original complaint (Docs. 40, 51) are granted. The Governor's motion to confirm the first amended complaint (Doc. 97) and motion to dismiss defendants' motions to dismiss as moot (Doc. 99) are denied. The first amended complaint (Doc. 102) is dismissed. The Governor's motion to place fair share fees in escrow (Doc. 83) is denied as moot. The remaining defendants are ordered to respond to the new operative complaint on or before June 10, 2015.

ENTER: May 19, 2015

/s/ Robert W. Gettleman
Robert W. Gettleman
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Case No: 15 C 1235

BRUCE RAUNER

v.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES COUNSEL 31, *et al.*

Judge: ROBERT W. GETTLEMAN

ORDER

Motion [91] to file complaint in intervention is granted and the complaint will be treated as the operative complaint in this action. Motions [40][51] to dismiss the original complaint are granted. Plaintiff's motion [97] to confirm the first amended complaint and motion [99] to dismiss defendants' motions as moot are denied. The first amended complaint is dismissed. Plaintiff's motion [83] to place fair share fees in escrow is denied as moot. The remaining defendants response to the new operative complaint is due by 6/10/2015.

Date: May 19, 2015

/s/ Robert W. Gettleman
ROBERT W. GETTLEMAN

PREAMBLE

In order to establish harmonious employment relations through a mutual process, to provide fair and equitable treatment to all employees, to promote the quality and continuance of public service, to achieve full recognition for the value of employees and the vital and necessary work they perform, to specify wages, hours, benefits, and working conditions, and to provide for the prompt and equitable resolution of disputes, the parties agree as follows:

AGREEMENT

THIS AGREEMENT has been made and entered into by and between the DEPARTMENT OF CENTRAL MANAGEMENT SERVICES, and all Departments, Boards and Commissions subject to the Personnel Code, and whose vouchers are subject to approval by the Department of Central Management Services, of the State of Illinois (hereinafter referred to as the "Employer") and the AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES COUNCIL 31, AFL-CIO (hereinafter referred to as the "Union") on behalf of its affiliated locals and the employees in the collective bargaining units described below and in Article I.

The Union has been duly certified by the Office of Collective Bargaining, State of Illinois, pursuant to Section 9, subsection (7) of the Personnel Code, and the Rules and Regulations which have been adopted by the Director of Central Management Services and the Civil Service Commission to implement that Section; and the Union is the historical representative pursuant to the Illinois Public Labor Relations Act, for the purposes of collective bargaining for the employees in: RC-6, a unit composed of correctional employees;

RC-9, a unit composed of institutional employees; RC-10, a unit composed of Technical Advisors and Hearing Referees; RC-14, a unit composed of all clerical positions, and any paraprofessional positions involving administrative, data treating, technical, or applied science work; RC-28, a unit composed of positions involving direct services to clients and the public; RC-42, a unit composed of maintenance employees; RC-62, a Statewide Technical Unit; RC-63, a Statewide Professional Unit.

These units exclude temporary, emergency, and provisional employees and those position titles and/or individual positions excluded by order of the Illinois State Labor Relations Board or by agreement of the parties under the standards for exclusion of the Rules and Regulations of that office referring to supervisory, confidential and managerial employees, which order or agreement shall be reduced to writing and may from time to time be amended.

DEFINITION OF TERMS

The following terms shall be interpreted as indicated below when used in this Agreement:

a) "Agency Head" refers to the head of a department, agency, board or commission.

b) "Employer" refers to the Director of the Department of Central Management Services, the Agency Head, the Facility Head, or the Intermediate Administrator or their representatives collectively or singly, as the context may require.

c) Unless otherwise agreed "Intermediate Administrator" shall be defined as the individual with regional, divisional or facility-wide authority who is subordinate to the Agency Head and superior to first-

level supervisors outside the bargaining unit, including, but not limited to, Local Office Administrators in Human Services, Public Aid, Regional Managers in Employment Security, Superintendents at institutional facilities, District Engineers in Transportation, Regional Land Managers in Natural Resources, Division of Land Management.

d) "Work Location" under RC-10, RC-14, RC-28, RC-62 and, RC-63 shall be defined as all of the premises of an Agency in a County, except that each of the following shall be considered a work location, unless otherwise agreed to by the parties in supplemental negotiations.

1) A building or related group of buildings with more than twenty-five (25) employees in the bargaining unit;

2) A building or group of buildings which constitute a facility in the Departments of Human Services, Corrections, Children and Family Services, or Veterans' Affairs;

3) Branch offices of a central regional office in counties adjacent to such regional offices, and the regional office, which offices shall be grouped as a work location.

Provided that, for purposes of health and safety committees, where more than one Agency has offices within a building or related group of buildings, all such offices shall be considered together as a work location. The "Work Location" under RC-6 and RC-9 shall be defined as d) 2) above, unless otherwise agreed to by the parties in agency supplemental negotiations.

e) For RC-6, RC-9, RC-10, RC-14, RC-28, RC-42, RC-62 and RC-63, "Employee" refers only to a

bargaining unit employee in a classification covered by this contract whether in a certified or probationary status, except that a probationary employee, an employee during an original six (6) month probationary period, has no right to use the grievance procedure in the event of discharge or demotion. The six (6) month probationary period may be extended up to six (6) additional months by mutual agreement of the parties.

f) "Facility Head" refers to the Head of a particular facility or institution of the Department of Corrections, Human Services, Children and Family Services, Veterans' Affairs, and Juvenile Justice, whichever is applicable.

g) "Working Supervisor" refers to an employee's bargaining unit supervisor identified in the Working Supervisor MOU in a classification covered by this agreement as indicated in Schedule A. Those working supervisors may perform managerial/supervisory responsibilities as historically performed within their job classification in a position identified in the Working Supervisor MOU prior to becoming bargaining unit members. The status as a Working Supervisor shall not be interpreted in a manner that would change the status of a public employee represented under the Illinois Public Labor Relations Act.

ARTICLE I
Recognition

Section 1. Recognition

The Employer recognizes the Union as the sole and exclusive bargaining representative in all matters establishing and pertaining to wages and salaries, hours, working conditions and other conditions of employment for employees in the units described in "Agreement" and composed of classifications attached

in Schedule A, and such other classifications as may be added in accordance with the provisions of this Agreement. The parties recognize that there are eight (8) bargaining units contained herein; each separately certified, and that the fact that they are all contained within this Agreement shall not imply that any provision or policy affecting or benefiting one unit applies to any other, unless otherwise so provided.

Section 2. Abolition or Merger of Job Classification

The Employer may, establish new classifications, or abolish, or merge, or change existing classifications.

The Union shall be notified of the Employer's interest to establish new classifications, or abolish, or merge, or change existing classifications and discuss with it such intention at least twenty-one (21) days prior to making its recommendation to the Civil Service Commission.

If the Employer subsequently determines to establish new classifications, or abolish, or merge, or change existing classifications, it shall negotiate with the Union over the impact of such.

Such negotiations shall include good faith impact bargaining as required under the State Labor Relations Act.

In the event the parties are unable to reach agreement, the Union may appeal through the contractual grievance procedure (Art. V) including Arbitration. The issue before the Arbitrator shall be whether or not the employee's rights have been violated as provided in the Agreement, and if so what the remedy should be.

Nothing in this Section shall diminish any rights provided for in other Sections of this Agreement.

Section 3. Integrity of the Bargaining Unit

A. The Employer recognizes the integrity of the bargaining unit and will not take any action having the effect of eroding bargaining unit work. Subject to the provisions of this Agreement, the Employer will continue to endeavor to assign bargaining unit work to bargaining unit employees. The hiring of temporary or emergency employees to supplement bargaining unit employees' work on a temporary basis or provisional employees appointed under Personnel Rule 302.150 or the use of an individual on a light duty assignment which has been agreed to by the Union shall not be considered erosion of the bargaining unit.

B. Emergency, temporary and provisional appointments shall be made in accordance with Section 8(b)(8); 8(b)(9); and 8(b)(10) of the Personnel Code. The Union shall be notified in writing within 10 business days of the appointment by the Agency and on a monthly basis by the Department of Central Management Services of the name, agency, title and position allocation number of all emergency, temporary and provisional appointments made to bargaining unit positions.

C. In the event that a back-to-back emergency, temporary, or provisional appointment, or a combination of appointments, is operationally necessary, upon timely request the Union will be provided with the rationale for such back-to-back appointment. The provision of rationale to the Union will be made in a timely fashion.

D. Unless Agency operational needs so require, no emergency, temporary, provisional or contractual employee shall be assigned to work a schedule of hours or days off if there is an employee in the same position

classification and work location who desires such a schedule of hours and days off.

Section 4. Union Exclusivity

The Employer shall not meet, discuss, confer, subsidize or negotiate with any other employee organization or its representatives on matters pertaining to hours, wages, and working conditions. Nor shall the Employer negotiate with employees over their hours, wages and working conditions, except as provided herein.

Section 5. Employer Neutrality

It is the policy of the Employer to support its employees' legal right to freely choose to be represented by a union. The Employer will not oppose efforts by any of its employees to be represented by a union; provided however, nothing herein shall limit the Employer's rights before the Illinois Labor Relations Board to determine the appropriateness of an employee's placement in a bargaining unit.

ARTICLE II
Management Rights

Section 1. Rights Residing in Management

Except as amended, changed or modified by this Agreement, the Employer retains the exclusive right to manage its operations, determine its policies, budget and operations, the manner of exercise of its statutory functions and the direction of its working forces, including, but not limited to: The right to hire, promote, demote, transfer, evaluate, allocate and assign employees; to discipline, suspend and discharge for just cause; to relieve employees from duty because of lack of work or other legitimate reasons; to determine the size and composition of the work force,

to make and enforce reasonable rules of conduct and regulations; to determine the departments, divisions and sections and work to be performed therein; to determine the number of hours of work and shifts per workweek; to establish and change work schedules and assignments; to introduce new methods of operation; to eliminate, contract, and relocate or transfer work and maintain efficiency.

Section 2. Statutory Obligations

Nothing in this Agreement shall be construed to modify, eliminate or detract from the statutory responsibilities and obligations of the Employer except that the exercise of its rights in the furtherance of such statutory obligations shall not be in conflict with the provisions of this Agreement.

ARTICLE III
Non-Discrimination

Section 1. Prohibition Against Discrimination

Both the Employer and the Union agree not to discriminate against any employee on the basis of race, sex, sexual orientation, creed, religion, color, marital or parental status, age, national origin, political affiliation and/or beliefs, nor shall the parties discriminate against any employee with a disability, or for other non-merit factors.

Section 2. Union Activity

The Employer and the Union agree that no employee shall be discriminated against, intimidated, restrained or coerced in the exercise of any rights granted by the Illinois Public Labor Relations Act, Illinois Revised Statutes, 5 ILCS 315/1 et seq. (P.A. 83-1012) or by this Agreement, or on account of

membership or non-membership in, or lawful activities on behalf of the Union.

Section 3. Membership Solicitation

Neither the Union nor its members shall solicit membership during an employee's work time.

Section 4. Equal Employment/Affirmative Action/ ADA/FMLA

The parties recognize the Employer's obligation to comply with federal and state Equal Employment Affirmative Action Laws, the Americans with Disabilities Act and the Family and Medical Leave Act (including intermittent leave as required).

ARTICLE IV
Checkoff/Fair Share

Section 1. Deductions

The Employer agrees to deduct from the pay of those employees who individually request it any or all of the following:

a) Union membership dues, assessments, or fees;

b) Union sponsored credit union contributions;

c) P.E.O.P.L.E. contributions.

Request for any of the above shall be made on a form agreed to by the parties and shall be made within the provisions of the State Salary and Annuity Withholding Act and/or other applicable State statutes and/or procedures established by the Comptroller.

An employee who has previously authorized payroll deductions pursuant to this Section shall continue to have such deductions made and shall not be required to reauthorize such deductions unless the employee has specifically authorized revocation of deductions

pursuant to Section 2 of this Article or has to re-sign other payroll deduction authorizations.

Upon receipt of an appropriate written authorization from an employee, such authorized deductions shall be made in accordance with law and the procedures of the Comptroller and shall be remitted semi-monthly to the Union in accordance with the current procedures, and at the address designated in writing to the Comptroller by the Union. The Local, State or International Union shall advise the Employer of any increase in dues or other approved deductions in writing at least fifteen (15) days prior to its effective date.

No later than July 1, 2005, when an employee has authorized payroll deductions for Union membership, the wage stub will state "Union dues" and the amount of deduction. If the employee has not authorized payroll deductions for Union membership, the wage stub will state "non mbr fees" and the amount of deduction.

Any time an authorized deduction would otherwise be discontinued without the employee's specific authorization, the Employer shall notify the employee and shall provide the employee with the necessary cards and/or forms needed to continue said deduction.

Section 2. Revocation

All employees covered by this Agreement who have signed Union dues checkoff cards for AFSCME prior to the effective date of this Agreement or who signed such cards after such date shall only be allowed to cancel such dues deduction within the prescribed procedures of the Comptroller.

Section 3. Fair Share

Pursuant to Section 3(g) of the Illinois Public Labor Relations Act effective July 1, 1984, the parties agree that the Union certified proportionate share, which shall not exceed the amount of dues uniformly required of members, shall be deducted from the earnings of the non-member employees as their share of the cost of the collective bargaining process, contract administration and the pursuance of matters affecting wages, hours and conditions of employment subject to terms and provisions of the parties' fair share agreement. The amount so deducted shall be remitted semi-monthly to the Union.

Section 4. Indemnification

The Union shall indemnify, defend and hold the Employer harmless against any claim, demand, suit or liability arising from any action taken by the Employer in complying with this Article.

Section 5. Availability of Cards

If the facility or work location supplies revocation cards, it shall also make available Union deduction cards. Such cards shall be supplied by the Union and shall be made available only upon request of the employee.

ARTICLE V
Grievance Procedure

Statement of Principle. The parties agree that in order for the grievance procedure to function efficiently and effectively, all grievances must be resolved at the lowest possible level of the Grievance Procedure.

Therefore, the parties agree that all persons responsible for resolving grievances at all levels of the procedure shall be vested with sufficient authority to

undertake meaningful discussions and to settle the grievance, if appropriate.

In order to reduce the number of grievances advanced to Step 4 of the Grievance Procedure, upon review, if an Agency or a local Union is found to have a large percentage of its grievances being advanced to the fourth level, a committee made up of representatives of the Union and CMS shall meet and endeavor to determine if all necessary means of resolving the grievances have been exhausted at the lower levels of the grievance procedure. If it is found that all necessary means to resolve a grievance(s) have not been exhausted, the committee will return the grievance(s) to the appropriate lower step for resolution.

Section 1. Grievance

a) A grievance is defined as any difference, complaint or dispute between the Employer and the Union or any employee regarding the application, meaning or interpretation of this Agreement or arising out of other circumstances or conditions of employment.

b) A written grievance shall contain a statement of the grievant's complaint, the Section(s) of the Agreement allegedly violated, if applicable, the date of the alleged violation and the relief sought. The form shall be signed and dated by the grievant. Improper grievance form, date or section citation shall not be grounds for denial of the grievance.

c) Grievances may be processed by the Union on behalf of an employee or on behalf of a group of employees or itself setting forth name(s) or group(s) of the employee(s). Either party may have the grievant or one grievant representing group grievants present at any step of the grievance procedure, and the

employee is entitled to Union representation at each and every step of the grievance procedure. The resolution of a grievance filed on behalf of a group of employees shall be made applicable to the appropriate employees within that group. Where available, videoconferencing and teleconferencing may be used to conduct grievance meetings and/or Arbitration Hearings by mutual agreement of the parties.

d) Nothing shall diminish the rights of an employee under P.A. 83-1012 or the rights of the Union under this Agreement.

Section 2. Grievance Steps

Step 1: Immediate Supervisor

The employee and/or the Union shall orally raise the grievance with the employee's supervisor who is outside the bargaining unit. The employee shall inform the supervisor that this discussion constitutes the first step of the grievance procedure. All grievances must be presented not later than fifteen (15) working days from the date the grievant became aware of the occurrence giving rise to the complaint. The immediate supervisor shall render an oral response to the grievance within ten (10) working days after the grievance is presented. If the oral grievance is not resolved at Step 1, the immediate supervisor shall sign the written statement of grievance prepared for submission at Step 2 acknowledging discussion of the grievance. In those circumstances where securing the signature of the first level supervisor who is physically not available to sign would have adversely affected a timely submittal to the second level, the grievance will be submitted to the second level without such signature. A copy of the grievance shall subsequently be provided to the first level supervisor for such

signature. The parties recognize that variations from the immediate supervisor, where mutually agreeable, may exist. Where there is no Employer representative outside a bargaining unit covered under this Agreement at Step 1, the grievance shall be filed at Step 2 and the time limits for filing and responding contained in Step 1 shall apply.

Notwithstanding the above, the employee and the Union may discuss the problem with the bargaining unit working supervisor, vested with the authority by the Employer in lieu of filing a grievance. An employee and the Union shall be allowed fifteen (15) working days from becoming aware of the problem, to raise it with the working supervisor who shall have five (5) working days to respond. If an employee or the Union wishes to file a grievance at step 2 after the discussion with the working supervisor, they may do so no later than fifteen (15) working days after the working supervisor's response is due.

Step 2: Intermediate Administrator

In the event the grievance is not resolved in Step 1, it shall be presented in writing by the Union to the Intermediate Administrator or his/her designee within five (5) working days from the receipt of the answer or the date such answer was due, whichever is earliest. Within ten (10) working days after the grievance is presented to Step 2, the Intermediate Administrator shall meet, discuss and attempt to resolve the grievance with the Union. If the parties are unable to resolve the grievance, the Intermediate Administrator shall render a written answer to the grievance within five (5) working days after such discussion is held and provide a copy of such answer to the Union. The written grievance shall be on an agreed upon form which shall be provided by the Union. The

written grievance shall contain a statement of the grievant's complaint, the Section(s) of the Agreement allegedly violated, if applicable, the date of the alleged violation and the relief sought. The form shall be signed and dated by the grievant. Improper grievance form, date or section citation shall not be grounds for denial of the grievance.

Step 3: Agency Head

If the grievance is still unresolved, it shall be presented by the Union to the Agency Head or his/her designee in writing within fifteen (15) working days after receipt of the Step 2 response or after the Step 2 response is due, whichever is earliest, or within fifteen (15) working days after the Step 1 response, or after the Step 1 response is due, if Step 2 is not applicable. It is agreed that appeals postmarked within the fifteen (15) working days time limit are timely. A copy of said grievance shall also be sent by the local Union to the Union's Step 3 representative. A grievance will not appear on the third level agenda unless a signed and dated grievance has been presented to the Agency Head or designee.

For the Department of Children and Family Services the Union shall be represented by a committee in each agency, made up of Union staff and four (4) bargaining unit members. For the Department of Human Services, the Union shall be represented by a committee made up of Union staff and seven (7) bargaining unit members. For the Department of Corrections/Juvenile Justice, the Union shall be represented by a committee made up of Union staff and five (5) bargaining unit members. For all other Departments, they will be divided into two Multi-Agency Committees for which the Union shall be represented by Union staff and a total of five (5) bargaining unit members on each

committee representing all other Agencies on their respective committee. The agencies will initially be divided into the following committees: Committee I shall consist of DVA, ISP, HFS, DNR, DCEO, CMS, IEMA, AGE, AGR, DOI, ICC, ICDD, LETSB, OSFM, and SRS. Committee II shall consist of IGB, Lottery, IRB, DES, DPH, DHR, FPR, DOT, Arts Council, CJIA, GAC, EPA, CDB, DMA, PTAB, PRB. The placement of other agencies, including other agencies not already assigned to a committee shall be by mutual agreement of the parties. Each agency shall be represented by the agency head or his/her designee.

Agency level grievance meetings shall be convened monthly at a time and place of mutual agreement. The duration of the meeting shall be dictated by the number of grievances pending, but shall be no more than five (5) days per month. After a grievance has been discussed at a Step 3 meeting either party may place the grievance on hold status. There shall only be one hold per grievance and any deviation from same shall be on a case by case basis, following mutual consultation and agreement. If the grievance has been resolved or denied, the parties shall sign the resolution within ten (10) working days.

Attendance at such meetings shall be without loss of pay subject to reasonable attendance requirements. The bargaining unit members of the Committee shall be paid for one-half day travel, if they are traveling from the Chicago area to the Springfield area or equivalent of same. The Committee members will be in paid status the remainder of the work day while and if in preparation for the scheduled grievance meeting. Management reserves the right to verify the use of time for travel and preparation as is stated above.

Step 4:

a) If the matter is not resolved at Step 3, the Union, by written notice to the Employer within fifteen (15) working days of the grievance being signed-off by the parties at Step 3, may appeal the grievance(s) to a pre-arbitration staff meeting. It is agreed that appeals postmarked within the fifteen (15) working days time limit are timely.

Pre-Arbitration Staff Meeting - CMS staff and Union staff shall meet on a monthly basis in an attempt to resolve the grievance(s) which are capable of resolution. The duration of the meeting shall be dictated by the number of grievances pending, but shall be no more than five (5) days per month. Such staff shall have the full authority to resolve those cases moved to the pre-arbitration level. If the grievance has been resolved or moved to arbitration by the Union, the parties shall sign the resolution within ten (10) working days.

b) Arbitration

Expedited

1. The parties agree to use an expedited arbitration system for all non-priority grievances, except as otherwise provided herein. The arbitrator shall be assigned from a designated panel. The arbitrator shall be a member of the Expedited Panel agreed upon by the parties. After the parties have signed the Step 4 resolution moving the grievance to Expedited arbitration, the parties shall arrange a place and date to conduct the hearing within a period of not more than sixty (60) days. Nothing herein precludes multiple cases being heard on the same day before the same arbitrator.

2. If either party concludes that the issues involved are of such complexity or significance as to warrant referral to the Regular Arbitration Panel, that party shall notify the other party of same at least five (5) working days prior to the scheduled time for the expedited arbitration. If there is a cancellation fee, that party shall bear the cost.

3. The hearing shall be conducted in accordance with the following:

a) the hearing shall be informal;

b) no briefs shall be filed or transcripts made;

c) there shall be no formal rules of evidence;

d) the hearing shall normally be completed within one day;

e) if the parties mutually agree at the hearing that the issues involved are of such complexity or significance as to warrant reference to the Regular Arbitration Panel, the case shall be referred to that panel and the parties shall split the arbitrator's cost; and

f) the arbitrator may issue a bench decision at the hearing but in any event shall render a decision within two (2) working days after conclusion of the hearing. Such decision shall be based on the evidence before the arbitrator and shall include a brief written explanation of the basis for such conclusion. An arbitrator who issues a bench decision shall furnish a written copy of the award to the parties within two (2) working days of the close of the hearing;

g) the parties agree to attempt to arrive at a joint stipulation of facts and issues prior to arbitration;

h) the parties shall attempt to limit the number of witnesses and the overall time for the presentation of the grievance so that additional grievances may be presented on the same day. Discussion for the purpose of limiting the length of the arbitration shall take place prior to the date of the arbitration.

4. A decision by a member of the Expedited Panel shall be final and binding, except it shall not be regarded as precedent or be cited in any future proceeding.

Regular Arbitration

1. Only priority grievances as defined in the MOU on Special Grievances, contract interpretation cases or those other disputes as may be mutually determined by the parties shall be scheduled for Regular Arbitration.

2. Arbitrators shall be selected from a permanent regular panel agreed upon by the parties. Each such arbitrator shall commit in advance to a minimum of two dates a month for the calendar year. If the parties are unable to agree on an arbitrator, the parties shall meet to discuss an alternative measure to select an arbitrator.

3. The parties shall make every effort to have the dispute heard at an arbitration hearing to be held within sixty (60) days following the Step 4A signoff.

4. The arbitrator in any given case must render an award therein within thirty (30) days of the close of the record in the case.

c) Arbitration Procedures

Both parties agree to attempt to arrive at a joint stipulation of the facts and issues as outlined to be submitted to the arbitrator.

The Employer or Union shall have the right to request the arbitrator to require the presence of witnesses and/or documents. Each party shall bear the expense of its own witnesses who are not employees of the Employer.

Questions of arbitrability shall be decided by the arbitrator. If a question of arbitrability is raised, the arbitrator must first make a determination of the arbitrability of the dispute unless the issue is of such a nature that a determination cannot be made at the hearing. Once a determination is made that the matter is arbitrable or if such preliminary determination cannot be reasonably made, the arbitrator shall then proceed to determine the merits of the dispute. The arbitrator shall neither amend, modify, nullify, ignore, add or subtract from the provisions of this Agreement.

The expenses and fees of the arbitrator shall be paid by the losing party. In cases of split decisions the arbitrator shall determine what portion each party shall be billed for expenses and fees. If either party seeks to vacate an arbitrator's award, such party shall be responsible for all costs including reasonable attorney fees of both parties in seeking and defending against such action, unless the party attempting to vacate the award prevails, in which case each party shall bear its own costs. The cost of the hearing rooms, if any, shall be shared equally. Nothing in this Article shall preclude the parties from agreeing to the appointment of a permanent arbitrator(s) during the

term of this Agreement or to use the expedited arbitration procedures of the American Arbitration Association.

The decision and award of the arbitrator shall be final and binding on the Employer, the Union, and the employee or employees involved.

If either party desires a verbatim record of the proceeding (Regular Arbitration only), it may cause such a record to be made, providing it pays for the record and makes a copy available without charge to the arbitrator. If the other party desires a copy it shall pay for the cost of its copy. If the parties agree to utilize a court reporter, the cost shall be shared.

Section 3. Time Limits

a) Grievances may be withdrawn at any step of the Grievance Procedure without prejudice. Grievances not appealed within the designated time limits will be treated as withdrawn grievances.

b) The time limits at any step or for any hearing may be extended by mutual agreement of the parties involved at that particular step.

c) The Employer's failure to respond within the time limits shall not find in favor of the grievant, but shall automatically advance the grievance to the next steps.

d) If the grievant has filed an appeal with the Civil Service Commission or the Executive Ethics Commission over an identical issue and penalty to that employee's grievance, the parties agree that the Grievance Procedure will not be applicable and the grievance shall be treated as withdrawn, unless the employee withdraws his/her appeal prior to a hearing being held and the grievance was timely filed and

processed by the Union through the contractual grievance procedure.

e) It is understood by the parties that the time limits for filing a grievance on a timely basis for disciplinary action shall begin on the date the employee receives the CMS-2.

Section 4. Special Grievances/Memorandum of Understanding

Grievances concerning discharge, suspensions pending judicial verdict, demotions, geographical transfers, reclassifications, layoffs, schedule changes pursuant to Article XII, Section 19, and the salary grade placement for new classifications pursuant to Article XXVI, Section 8 shall be processed in accordance with the Memorandum of Understanding.

Section 5. Number of Representatives and Jurisdictions

The number of Union stewards and the facilities they represent shall be agreed upon locally. The Union shall designate the Union stewards and representatives and shall supply a list of names in writing to the Department of Central Management Services and agency and local level administrators on a quarterly basis. Existing local agreements, except by mutual agreement, shall not be changed.

Section 6. Time Off, Meeting Space and Equipment Use

a) Time Off: The grievant(s) and/or Union grievance representative(s) will be permitted reasonable time without loss of pay during their working hours to investigate and process grievances. A grievant who is called back on a different shift or on his/her day off as a result of the Employer scheduling a grievance

meeting shall have such time spent in the meeting considered as time worked. Witnesses whose testimony is pertinent to the Union's presentation or argument will be permitted reasonable time without loss of pay to attend grievance meetings and/or respond to the Union's investigation. No employee or Union representative shall leave his/her work to investigate, file or process grievances without first notifying and making mutual arrangement with his/her supervisor or designee as well as the supervisor of any unit to be visited, and such arrangements shall not be denied unreasonably. Employees attending grievance meetings shall normally be those having direct involvement in the grievance. The Employer reserves the right to require reasonable documentation of time spent in processing grievances including time spent using the telephone for these purposes. The Employer agrees that such documentation of time shall not be construed to allow supervisors to question the content or merits of the grievance(s).

b) Meeting Space and Equipment Use: Upon request, the employee and Union representative shall be allowed the use of an available appropriate room while investigating or processing a grievance; and, upon prior general approval, shall be permitted the reasonable use of telephone facilities for the purpose of investigating or processing grievances. When feasible, and where equipment is currently available, Union stewards and/or officers may utilize electronic mail and/or facsimile equipment for the purpose of investigating or processing grievances. Such transmission will be primarily to expedite communication regarding such matters, will be reasonable with respect to time and volume, and will be consistent with this Article. Such use shall not include any long distance or toll calls at the expense of the Employer.

c) The Employer shall not be responsible for any travel or subsistence expenses incurred by employee or Union representatives in the processing of grievances.

d) Interpreters and Interpreting Equipment: The Employer will provide qualified interpreters and interpreting equipment as necessary for a reasonable accommodation.

Section 7. Advanced Grievance Step Filing

Certain issues which by nature are not capable of being settled at a preliminary step of the grievance procedure or which would become moot due to the length of time necessary to exhaust the grievance steps, such as those pertaining to Article XXIII, Section 3, may by mutual agreement be filed at the appropriate advance step where the action giving rise to the grievance was initiated.

Mutual agreement shall take place between the appropriate Union representative and the appropriate Employer representative at the step where it is desired to initiate the grievance.

Section 8. Pertinent Witnesses and Information

Except as otherwise provided in Steps 4(b) and 4(c), either party may request the production of specific documents, books, papers or witnesses reasonably available and substantially pertinent to the grievance under consideration. Such request shall not be unreasonably denied, and if granted shall be in conformance with applicable laws, and rules issued pursuant thereto, governing the dissemination of such materials.

Requests to interview the other party's witnesses shall be made through the appropriate representatives. Each party shall have the right to have its representatives present during all such interviews.

Once the Union has requested the information from the Agency and the request is unreasonably denied, the Union may petition the Director of Central Management Services who shall subpoena the substantially pertinent material and/or witnesses in conformance with the provisions of this Section and his/her statutory powers within ten (10) working days of receiving such request. The operating Agency shall have ten (10) working days to respond to the subpoena. Any delay shall not penalize the grievant.

ARTICLE VI
Union Rights

Section 1. Union Activity During Working Hours

Employees shall, after giving appropriate notice to their supervisor(including the location and approximate duration of the meeting), be allowed reasonable time off with pay during working hours to attend grievance hearings, labor/management meetings, negotiations of their own agency and/or facility supplemental agreements, meetings covering modifications of supplemental agreements, committee meetings and activities if such committees have been established by this Contract, or meetings called or agreed to by the Employer, if such employees are entitled or required to attend such meetings by virtue of being Union representatives, stewards, witnesses, or grievants, and if such attendance does not substantially interfere with the Employer's operations. Any employee exercising rights under this Section shall be limited to his/her operating agency unless the employee is requesting to

attend such meetings or hearings at a worksite that does not have a steward or representative available or the employee is an officer or representative of a conglomerate local representing more than one state agency. For conglomerate locals which cover multiple work locations, only one (1) officer or representative shall be permitted to leave a given worksite and only one (1) officer or representative shall be permitted to visit a given work site of another agency at one (1) time for purposes of this section. Where current practice exists, local union representatives shall be authorized to bring union owned electronic devices, i.e., laptop computers, etc., on state premises for the purposes of performing union business. Abuse of this Section may result in termination of this practice. Extensions of this practice shall be subject to agency/facility supplemental negotiations taking into account legitimate security needs of the agency/facility.

After giving appropriate notice to their supervisor outside the bargaining unit, employees shall be allowed time off without loss of pay to attend certified stewards training, if such attendance does not substantially interfere with the Employer's operations. Such training shall not exceed two (2) work days for each steward for the term of this Agreement. The employee shall provide proof of attendance.

Section 2. Access to State Premises by Union Representatives

a) The Employer agrees that local representatives and officers and AFSCME staff representatives shall have reasonable access to the premises of the Employer, giving notice upon arrival to the appropriate Employer representative. Such visitations shall be for the reason of the administration of this Agreement. By mutual arrangement with the Employer in

emergency situations, Union staff representatives or local Union representatives may call a meeting during work hours to prevent, resolve or clarify a problem.

b) Upon request, the Union shall be allowed the use of electronic mail on a semi-annual basis to solicit personal e-mail addresses of all AFSCME represented employees (excluding Department of Military Affairs). The parties shall meet to discuss the method and content of the solicitation.

Section 3. Time Off for Union Activities

Local Union representatives shall be allowed time off without pay for legitimate Union business such as Union meetings, State or area wide Union committee meetings, Union training sessions, State-wide contract negotiations, State or International conventions, provided such representative shall give reasonable notice to his/her supervisor of such absence and shall be allowed such time off if it does not substantially interfere with the operating needs of the Employer. The employee may utilize any accumulated time (holiday, personal, vacation days) in lieu of taking such without pay.

Such time off shall not be detrimental in any way to the employee's record.

Employees absent from work pursuant to this Section shall continue to accrue seniority, continuous service and creditable service during such absences.

Section 4. Union Bulletin Boards

The Employer shall continue to provide bulletin boards and/or space at each work location. The number, size and location of each shall be mutually agreed to by the parties in local level negotiations. The boards shall be for the sole and exclusive use of the

Union. The items posted shall not be political (including solicitation of funds or volunteers for a political candidate or political party), partisan or defamatory in nature. Nor shall such literature be posted in an employee's work space.

Section 5. Information Provided to Union

At least once each month, the Employer shall notify the Union in writing of the following personnel transactions involving bargaining unit employees within each agency and on a work location basis: New hires, promotions, bid numbers where such are used, demotions, reallocations, superior performance increases, checkoff revocations, layoffs, reemployments, transfers, leaves, returns from leave, suspensions, discharges, terminations and Social Security numbers.

In addition, the Employer shall furnish the Union every ninety (90) days the current seniority rosters and reemployment lists, applicable under the seniority provisions of this Agreement.

In all transactions listed above, employees' Social Security numbers shall be provided. The Union shall upon request receive such information on computer tapes, where available, from the Department of Central Management Services.

Each agency will provide the Union with information concerning temporary assignments when such information becomes available and in a form mutually agreed upon between the Agency and the Union. The frequency and other details of the provision of such information will be determined by the parties in Supplementary negotiations.

The Employer will notify the Union when a bargaining unit position (vacant or otherwise) is

abolished and upon request discuss with the Union such abolishment.

Section 6. Distribution of Union Literature

During employee's non-working hours, he/she shall be permitted to distribute Union literature to other non-working employees in non-work areas and in work areas during non-work hours giving notice upon arrival to the appropriate supervisor of the building or work location as applicable. He/she shall be allowed access to general public entrances, public hallways, cafeterias, etc., for such purposes. Such Union literature shall not solicit funds for a political candidate or political party.

However, the parties recognize that at some worksites, a staggered schedule for breaks and meal periods or starting and quitting times creates the condition in which some employees are always working while others are not. Where distribution would consequently be disruptive of working employees, it shall normally be carried out while the largest number of employees are on rest or meal periods or other non-working time.

Section 7. Union Meetings on State Premises

The Employer agrees to make available State conference and meeting rooms for Union meetings upon prior notification by the designated Union representative, unless to do so would seriously interfere with the operating needs of the Employer, or cause additional cost or undue inconvenience to the Employer.

Section 8. Rate of Pay

Any time off with pay provided for under this Article shall be at the employee's regular rate of pay as though the employee were working.

Section 9. Stewards and Union Representatives

Those employees acting as stewards and/or Union representatives shall not receive preferential treatment with regards to shift or job assignments. The Employer agrees, however, that such employees shall be reassigned because of operational needs only and not because of legitimate Union activity.

Section 10. Union Orientation

The current practices with respect to Union orientation of new employees in those agencies where the Union conducts said orientation shall continue.

The Union shall be permitted to conduct an orientation program of new employees, and current employees who transferred to a different agency. In those agencies that do not have a regularly scheduled orientation of new employees, the mechanics of Union orientation shall be determined pursuant to the Memorandum of Understanding entitled "Supplemental Agreements".

Such attendance by employees shall be on a voluntary basis and without loss of pay for the employees involved.

ARTICLE VII
Labor/Management Committee Meetings

For the purpose of maintaining communications between labor and management in order to cooperatively discuss and solve problems of mutual concern:

a) The head of each work location or his/her designee shall meet monthly with the appropriate Union committee representing this bargaining unit or, if the parties agree, combined meetings with other AFSCME bargaining units. Less frequent meetings may occur by mutual agreement of the parties;

b) The agency head and/or his/her designees shall meet with the Union at least once every six (6) months;

c) The Department of Central Management Services shall meet with the Union at least once every six (6) months.

The above meetings shall be scheduled at a time, place and date mutually agreed upon. More frequent work location meetings may be held when necessary at the request of either party. Such meetings shall be conducted combining all bargaining units unless mutually agreed otherwise.

Each party shall normally prepare and submit an agenda to the other two (2) weeks prior to the scheduled meeting. Notwithstanding the forgoing, nothing shall preclude either party from adding agenda items prior to the meeting. Minutes shall be taken and forwarded to the parties. These meetings may be attended by a reasonable number of AFSCME staff representatives and Local Union representatives from facilities or work locations as designated by the Union, except past practice in regards to the number of employees for the RC-6 and RC-9 bargaining units shall prevail.

(RC-42 only)

Monthly labor management meetings may be attended by no more than three (3) bargaining unit employees and by a reasonable number of AFSCME staff representatives and local Union representatives from facilities or work locations as designated by the Union. The six (6) month agency labor management meetings may be attended by no more than six (6) bargaining unit employees, except that the Department of Natural Resources is allowed eight (8) bargaining unit employees. The state-wide six (6)

month labor management meeting with the Department of Central Management Services shall be attended by no more than fifteen (15) bargaining unit employees.

ARTICLE VIII
Work Rules

Section 1. Rules of Personal Conduct

The Employer has the right to establish reasonable rules of personal conduct and will notify the employees and the Union within ten (10) working days in advance of any new or modified rules of personal conduct.

Section 2. Procedural Work Rules

Prior to establishing or changing procedural work rules or regulations, such as off-duty uniform usages, absent or tardy call-ins, doctors' statements for absences, parking violations and other similar matters, the Employer shall meet with the Union in a timely manner for the purpose of consultation and negotiations. Such procedural work rules and/or regulations shall either be posted or otherwise made available to affected employees.

Section 3. State Officials and Employees Ethics Act

Employees shall comply with the provisions set forth in the State Officials and Employees Ethics Act (5 ILCS 430), provided that nothing in this Section shall be deemed to diminish the rights, privileges, or remedies of a State employee under any other federal or State law, rule, or regulation or under any collective bargaining agreement or employment contract.

ARTICLE IX
Discipline

Section 1. Definition

A. The Employer agrees with the tenets of progressive and corrective discipline. Disciplinary action or measures shall include only the following:

a) Oral reprimand;

b) Written reprimand;

c) Suspension (notice to be given in writing); and

d) Discharge (notice to be given in writing).

Disciplinary action may be imposed upon an employee only for just cause. An employee shall not be demoted for disciplinary reasons. Discipline shall be imposed as soon as possible after the Employer is aware of the event or action giving rise to the discipline and has a reasonable period of time to investigate the matter.

In any event, the actual date upon which discipline commences may not exceed forty-five (45) days after the completion of the pre-disciplinary meeting.

The parties recognize that counselling and corrective action plans are not considered disciplinary actions.

B. All agencies, boards, and commissions with employees covered under the Master Contract shall be bound by the Affirmative Attendance Memorandum of Understanding.

An employee shall, whenever possible, provide advance notice of absence from work. Absence of an employee for five (5) consecutive work days without reporting to the Employer or the person designated by

the Employer to receive such notification may be cause for discharge. The above provision shall not apply so long as the employee then notifies as soon as it is physically possible.

Section 2. Manner of Discipline

If the Employer has reason to discipline an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public.

Section 3. Suspension Pending Discharge

The Employer may suspend an employee for up to thirty (30) calendar days pending the decision whether or not charges for discharge shall be filed against the employee and such actions shall not be subject to Article V, Grievance Procedure. If suspension pending discharge is replaced by another disciplinary action, written notice will be issued and such action may be subject to the grievance procedure.

Section 4. Pre-Disciplinary Meeting

For discipline other than oral reprimands, the Employer shall hold a pre-disciplinary meeting. Pre-disciplinary meetings and employee review hearings shall be held during the employee's worktime. If arrangements for such cannot reasonably be made, the hearing shall be scheduled immediately preceding or immediately following the employee's shift on the employee's workday. An employee whose hearing begins after the end of his/her shift shall be paid from the end of his/her shift through the end of his/her hearing at the appropriate rate. An employee whose hearing begins before the start of his/her shift shall be paid from the time the hearing is scheduled through the start of the employee's shift at the appropriate

rate. Should the hearing be postponed or rescheduled at the request of the employee and/or the Union at a time other than before, during, or after the employee's shift, provisions for payment shall not apply. An employee's Working Supervisor may be allowed to conduct pre-disciplinary meetings under supervision of a non-bargaining unit supervisor. The role of Working Supervisors who are union representatives shall be to provide relevant information or to attend pre-disciplinary meetings to assist in the process. The limitation of said duties shall not be detrimental in any way to the Working Supervisor's record.

Prior to notifying the employee of the contemplated measure of discipline to be imposed, the Employer shall notify the Union of the meeting and reasonably in advance of such meeting shall provide the Union with the alleged infraction and shall make every reasonable effort to provide all documentation being used by the Employer to substantiate the alleged infraction. The Employer then shall meet with the employee involved and inform him/her of the reasons for such contemplated disciplinary action including any names of witnesses and copies of pertinent documents. Employees shall be informed of their rights to Union representation and shall be entitled to such, if so requested by the employee, and the employee and Union representative shall be given the opportunity to rebut or clarify the reasons for such discipline. If a rebuttal is not presented at the time of the pre-disciplinary meeting, a rebuttal shall be provided within five (5) work days by the employee or the Union, provided that the documentation has been supplied reasonably in advance of the meeting as set forth in this section.

Reasonable extensions of time for rebuttal purposes will be allowed when warranted and if requested. If the employee does not request Union representation, a Union representative shall nevertheless be entitled to be present as a non-active participant at any and all such meetings. Except for discipline pursuant to an agreed upon time abuse policy, the current procedure for pre-suspension/pre-separation hearings in Cook County Public Aid shall continue, unless amended by the parties in supplemental negotiations.

Section 5. Oral Reprimands

In cases of oral reprimands, the supervisor must inform the employee that he/she is receiving an oral reprimand and of their right to Union representation, which shall be provided if so requested. The employee shall also be given reasons for such discipline, including any names of witnesses and copies of pertinent documents. Notations of oral reprimands placed in the employee's personnel file shall be provided to the employee and the Union.

Section 6. Notification and Measure of Disciplinary Action

a) In the event disciplinary action is taken against an employee, other than the issuance of an oral reprimand, the Employer shall promptly furnish the employee and the Union in writing with a clear and concise statement of the reasons therefore. The measure of discipline and the statement of reasons may be modified, especially in cases involving suspension pending discharge, after the investigation of the total facts and circumstances. But once the measure of discipline is determined and imposed, the Employer shall not increase it for the particular act of misconduct which arose from the same facts and

circumstances. The Employer shall notify an employee of his/her suspension prior to its effective date. If the Employer is unable to contact the employee, the Employer shall notify the Union prior to the effective date of the suspension.

b) An employee shall be informed that he/she is entitled to the presence of a Union representative at non-criminal investigatory interviews conducted by an agency's Inspector General or internal affairs unit, the Executive Inspector General or the Illinois State Police Division of Internal Investigations. If such an interview is to be conducted away from the employee's worksite, the employee shall be so notified prior to leaving his/her worksite. In the case of all other non-criminal investigatory interviews, the person conducting the interview shall inform an employee that he/she is entitled to the presence of a Union representative not later than the commencement of the interview, provided that the subject matter of the interview could cause a reasonable person to believe that the employee could be disciplined as a result of the interview.

An employee shall be entitled to the presence of a Union representative at an investigatory interview if he/she requests one and if the employee has reasonable grounds to believe that the interview may be used to support disciplinary action against him/her. Such Union representative may be present during an investigatory interview for the purpose of protecting an employee's rights under the Collective Bargaining Agreement; however, such Union representative shall not act in such a manner so as to obstruct the investigation. It is understood by the parties that an employee's statement, either oral or written, made in investigatory interviews when representation is

requested by the employee and denied shall not be used against him/her in any subsequent disciplinary action. All time spent by an employee, including travel time, who is required by the Employer to attend an investigatory interview away from the employee's regular workplace shall be paid by the Employer at the appropriate rate. All related travel costs shall be paid pursuant to the Travel Control Board rules. An employee who signs an investigatory interview statement shall be given a copy of the signed statement upon completion of the investigation, if requested, and in advance of any disciplinary meeting. An employee who is required to attend a subsequent interview(s) shall have the opportunity, if available, to review his/her prior signed written statement(s) at the beginning of such interview(s), upon request. If the signed written statement(s) is unavailable when requested by the employee, the employee shall not be adversely impacted by the Employer's failure to provide said statement(s). Following such an investigation the employee and the Union shall be notified in writing that the investigation is complete. If an investigation of alleged employee misconduct does not lead to discipline the employee shall receive written notification that the investigation is closed without charges being filed, and the allegations of misconduct will not become part of the employee's permanent file nor be used to adversely affect the employee's contractual rights.

c) Nothing in this Section shall prevent the Employer from relieving employees from duty in accordance with its practice. The employee shall not lose any wages because of such release.

Section 7. Removal of Discipline

Any written reprimand or discipline imposed for tardiness or absenteeism shall be removed from an employee's record if, from the date of the last reprimand or discipline, two (2) years pass without the employee receiving an additional reprimand or discipline for such offense. The two (2) year period shall be extended by any leave of absence or disciplinary suspension. Any reprimand for other causes shall be removed from the employee's record based on the above criteria. Such removal shall be at the request of the employee but in any case shall not be used against the employee.

Section 8. Polygraph

No employee shall be required to take a polygraph examination as a condition of retaining employment with the Employer nor shall be subject to discipline for the refusal to take such. An AFSCME representative may accompany a bargaining unit employee to a polygraph examination. The representative may review the polygraph questions but may not be present during the administration of the polygraph examination.

ARTICLE X
Vacations

Section 1. Amounts

Employees, except emergency, temporary and those paid pursuant to Part II, Section 3 of the Pay Plan, shall earn vacation time. No employee on leave of absence may earn vacation except when the leave was for the purpose of accepting a temporary working assignment in another class.

Eligible employees shall earn vacation time in accordance with the following schedule:

a) From the date of hire until the completion of five (5) years of continuous service: ten (10) work days per year.

b) From the completion of five (5) years of continuous service until the completion of nine (9) years of continuous service: fifteen (15) work days per year.

c) From the completion of nine (9) years of continuous service until the completion of fourteen (14) years of continuous service: seventeen (17) work days per year.

d) From the completion of fourteen (14) years of continuous service until the completion of nineteen (19) years of continuous service: twenty (20) work days per year.

e) From the completion of nineteen (19) years of continuous service until the completion of twenty-five (25) years of continuous service: twenty-two (22) work days per year.

f) From completion of twenty-five (25) years of continuous service: twenty-five (25) work days per year.

Probationary employees earn vacation and may use such during their original six (6) months probationary period at the discretion of the Employer. Employees must be in paid status at least one-half (1/2) of the work days of the month to be credited for their earned vacation for that month.

Section 2. Vacation Time

Vacation time may be taken in increments of not less than one-half (1/2) day at a time, and any time after it is earned. Supervisors may however, grant employee requests to use vacation time in smaller increments of fifteen (15) minutes after a minimum use of one-half (1/2) hour. Vacation time shall not be accumulated for more than twenty-four (24) months after the end of the calendar year in which it is earned.

Vacation time earned shall be computed in workdays.

After an employee's earned vacation time has been so computed, if there remains a fractional balance of one-half (5/10) of a workday or less, the employee shall be deemed to have earned vacation time of one-half (5/10) of a workday, in lieu of the fractional balance; if there remains a fractional balance of more than one-half (5/10) of a workday, the employee shall be deemed to have earned a full workday of vacation time in lieu of a fractional balance.

Such rounding off of fractional balances shall only be done upon an employee's request for vacation days in increments of five (5) or more. However, no employee shall accumulate more than one (1) day per calendar year by rounding off under this Section.

Section 3. Interrupted Service

Computation of vacation time of State employees who have interrupted continuous State service shall be determined as though all previous State service which qualified for earning of vacation benefits is continuous with present service. The rule provided in this paragraph applies to vacation time earned on or after October 1, 1972.

Section 4. Part-time and Intermittent Employees

Part-time employees shall earn vacation in accordance with the schedule set forth in Section 1 of this Article on a pro-rated basis determined by a fraction the numerator of which shall be the hours worked by the employee and the denominator of which shall be the normal working hours in the year required by the position. Intermittent employees shall earn vacation in accordance with the current practice.

Section 5. Vacation Schedules

Subject to Section 6 and the Employer's operating needs, vacations shall be scheduled as requested by the employee in writing. The Employer shall respond to vacation requests within five (5) work days. Where current practice provides for a quicker response, such practice shall continue. Once scheduled vacation is approved it will only be canceled if the Employer's operating needs require that employee's services. The necessity of an overtime assignment shall not be a consideration in the cancellation of approved vacation. In any event, upon request, vacation time must be scheduled so that it may be taken no later than twenty-four (24) months after the expiration of the calendar year in which such vacation time was earned. If an employee does not request and take accrued vacation within such twenty-four (24) month period, vacation earned during such calendar year shall be lost. Except that the period of time an employee is on an approved leave of absence pursuant to Article XXIII, Leaves of Absence, shall not count toward the twenty-four (24) month period.

Section 6. Vacation Schedules by Seniority

By January 31 of each calendar year, employees may submit in writing to the Employer their preferences for different time periods for vacation, provided an employee may not submit more than three (3) preferences. Such request may include vacation through the end of February of the following calendar year. In establishing vacation schedules, the Employer shall consider both the employee's preference and the operating needs of the agency. Where the Employer is unable to grant and schedule vacation preferences for all employees within a position classification within a facility but is able to grant some of such (one or more) employees such vacation preferences, employees within the position classification shall be granted such preferred vacation period on the basis of seniority. An employee who has been granted his/her first preference shall not be granted another preference request if such would require denial of the first preference of a less senior employee. An employee's preference shall be defined as a specific block of time uninterrupted by work days.

Employees who file their preference by January 31, shall be notified of the vacation schedules by March 1 of that calendar year. Employees requesting vacation time who have moved at their prerogative to a different work unit, and whose preference conflicts with another employee in that work unit, or those employees who have not filed their preference by January 31 or were not granted such request, shall be scheduled on the basis of the employee's preference and the operating needs of the Employer.

Section 7. Payment in Lieu of Vacation

a) If because of operating needs the Employer cannot grant an employee's request for vacation time within the twenty-four (24) month period after the expiration of the calendar year such time was earned, such vacation time shall be liquidated in cash at straight time provided the employee has made at least three (3) requests, each for different time periods, for such time within the calendar year preceding liquidation, or it may be accumulated indefinitely subject to the provisions of this Article.

b) No salary payment shall be made in lieu of vacation earned but not taken except as in (a) above and on termination of employment for eligible employees with at least six (6) months of continuous service in which case the effective date of termination shall not be extended by the number of days represented by said salary payment.

c) An employee who is indeterminately laid off pursuant to Article XX, Section 2, may receive lump sum payment in lieu of unused vacation under this Section at the request of the employee and with determination by the agency that funds are so available, otherwise the employee shall be paid from the regular payroll on a day-for-day basis until such accrued vacation is liquidated.

Such liquidation of vacation benefits does not extend the effective date of layoff and no additional benefits shall be earned or granted during such period of liquidation of vacation benefits.

In the event an agency specifies in the layoff plan approved in accordance with Personnel Rule 302.520 that the employee is to be recalled under Article XX, Section 5, Recall, on a certain date, the payment of

salary in lieu of vacation may be withheld, with the payment becoming due on the date the employee is scheduled to return if in fact the employee is not recalled on that date.

In the event an employee is returned to active employment in trainee, provisional, probationary, certified or exempt status during such period of liquidation of vacation benefits, payment shall cease and the unpaid balance credited to the employee's vacation account. If the return is to any other status, the liquidation shall be completed, unless the employee requests otherwise.

Section 8. Payment on Death of Employee

Upon the death of the State employee, the person or persons specified in Section 14a of "an Act in relation to State Finance," approved June 10, 1919, as amended, shall be entitled to receive from the appropriation for personal services theretofore available for payment of the employee's compensation such sum for any accrued vacation period to which the employee was entitled at the time of death. Such shall be computed by multiplying the employee's daily rate by the number of days accrued vacation due.

Section 9. Disposition of Work During Vacation

Insofar as practicable during an employee's vacation, the Employer shall assign non-individual work to other employees. Upon return from vacation, an employee shall be allowed reasonable time to review work done during his/her absence.

Section 10. Vacation Pay/Academic Year Educators (RC-63)

Beginning with the academic school year 2000, permanent, full-time academic year Educators shall

earn vacation in accordance with the following schedule:

a) From the completion of one (1) year of service until the completion of ten (10) years of service: three (3) work days per year of employment.

b) From completion of ten (10) years of service until the completion of fourteen (14) years of service: five (5) work days per year of employment.

c) From completion of fourteen (14) years of service until the completion of nineteen (19) years of service: eight (8) work days per year of employment.

d) From completion of nineteen (19) years of service until the completion of twenty-five (25) years of service: eleven (11) work days per year of employment.

e) From completion of twenty-five (25) years of service: fourteen (14) work days per year of employment.

Payment for such vacation shall be paid in cash during the fiscal year in which it was earned unless the Superintendent at his/her discretion grants employee requests for vacation time usage during the academic year.

ARTICLE XI
Holidays

Section 1. Amounts

All employees shall have time off, with full salary payment on the following holidays or the day designated as such by the State:

New Year's Day
Martin Luther King Day
Lincoln's Birthday Presidents' Day Memorial Day

Independence Day Labor Day
Columbus Day
Veterans' Day Thanksgiving Day
Friday Following Thanksgiving Day
Christmas Day
General Election Day
(on which members of the House of Representatives are elected)and any additional days proclaimed as holidays or non-working days by the Governor of the State of Illinois or by the President of the United States.

Section 2. Equivalent Time Off

When a holiday falls on an employee's scheduled day off, or an employee works on a holiday, equivalent time off shall be granted within the following twelve (12) month period. It shall be granted on the day requested by the employee unless to do so would interfere with the Employer's operations, in which event the employee's next requested day off shall be given or cash paid in lieu thereof, or accumulated indefinitely.

Holiday time off may be taken in increments of one-half (1/2) day, except where current practice so provides it may be taken in increments of less than one-half (1/2) day in accordance with that practice. Notwithstanding the above, supervisors may grant employee requests to use holiday time in smaller increments of fifteen (15) minutes after a minimum use of one-half (1/2) hour.

Section 3. Cash Payment

In lieu of equivalent time off as provided for in Section 2 above, an employee who works either the actual holiday or the observed holiday may choose to receive double time cash payment, except an employee who works on only Labor Day, Thanksgiving Day or

Christmas Day may choose to receive double time and one-half cash payment in lieu of time off. When an employee works (excluding roll-call) on a day on which a holiday falls, either the actual holiday or the observed holiday, he/she shall receive equivalent time off or cash payment in the amounts specified above for any time in excess of his/her regular hours of work.

Section 4. Advance Notice

Employees scheduled to work a holiday shall be given as much advance notice as practicable. (RC 62 and RC 63 only) Such holiday scheduling shall be from among employees who perform the actual duties and responsibilities of the necessary work and shall be on a seniority rotation basis subject to the operating needs of the agency.

Section 5. Holiday During Vacation

When a holiday falls on an employee's regularly scheduled work day during the employee's vacation period, the employee will be charged with that holiday and retain the vacation day.

Section 6. Eligibility

To be eligible for holiday pay, the employee shall work the employee's last scheduled work day before the holiday and first scheduled work day after the holiday, unless absence on either or both of these work days is for good cause and approved by the Employer.

Intermittent employees to be eligible for holiday pay shall work their regularly scheduled day before the holiday and their regularly scheduled day after the holiday within a period of ten (10) working days which shall include the holiday.

It is understood by the parties that permanent part-time employees shall be eligible for holiday payment

in accordance with Article XI, Section 6, on a pro-rated basis. Such pro-ration shall be according to the number of paid holidays regular full-time employees receive. Part-time employees whose schedules are specifically weekends and holidays are excluded from this provision.

Section 7. Accumulated Holiday Scheduling

Where the Employer is unable to grant the request from all employees within a position classification for a particular day off in the utilization of an accumulated holiday under this Article, but is able to grant some (one or more) of such employees such day off, an employee(s) within the position classification shall be granted the requested day off on the basis of seniority provided such senior employee(s) has made such request at least two (2) weeks prior to the requested accumulated holiday off. If no prior request was made within the above time limits, such day off shall be granted in accordance with Section 2 of this Article.

The Employer will, where possible, inform an employee of whether it can grant the request for a particular day off within five (5) days of such request.

Section 8. Holiday Observance

When a holiday falls on a Sunday, the following Monday shall be observed as the holiday. When a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday.

Section 9. Payment Upon Separation

Upon separation for any reason, the employee shall be paid for all accrued holidays.

Section 10. Holiday Pay/Academic Year Educators (RC-63)

Beginning with the academic school year 1984, permanent, full-time academic year Educators will receive double time cash payment for work performed on six (6) of the holidays designated in Section 1 of this Article which occur during the academic year. Such holidays shall be set forth in the school calendar at the discretion of the Superintendent or his/her designee.

Beginning with the academic school year 2009-2010, permanent, full-time academic year Educators will receive double time cash payment for work performed on ten (10) of the holidays designated in Section 1 of this Article which occur during the academic year. Such holidays shall be set forth in the school calendar at the discretion of the Superintendent or his/her designee, but shall include Labor Day, Thanksgiving, and Christmas Day.

Section 11. Holiday Work (RC-42 and Site Technicians I and II)

Where some but not all employees are scheduled to work a holiday, the scheduling shall be offered on a seniority rotation basis.

ARTICLE XII
Hours of Work and Overtime

Section 1. General Provisions RC-6

a) "Consecutive Days and Hours" The regular hours of work each day shall be consecutive and the work week shall consist of five (5) consecutive days beginning with the time the employee starts work on the first day of his/her work week.

b) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the

employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time.

c) "Compensatory Payment" Hours worked in excess of the below specified hours but less than forty (40) shall not be compensated, provided that for such time so worked, compensatory overtime shall be accrued at the rate equal to the time so worked and compensatory time off shall be granted by the Employer within the fiscal year earned at a time convenient to the employee consistent with the operating needs of the Employer, and if not so granted or taken, it shall be liquidated in cash before the end of the fiscal year in which earned.

Correctional Officers.....38 3/4 hours

Employees in other position classifications except Youth Counselors, Youth Supervisors and Dietary employees in Juvenile Facilities.....37 1/2 hours

d) "Work Day and Work Week"

(i) Correctional Officers - 38 3/4 hours consisting of five (5) consecutive days of 8 1/4 consecutive hours, including an unpaid lunch period of thirty (30) minutes per day and a roll-call period of fifteen (15) minutes per day which shall be paid for in accordance with Section 20 of this Article.

(ii) Employees in other position classifications except Youth Counselors, Youth Supervisors and Dietary employees in Juvenile facilities consisting of five (5) consecutive days of eight (8) consecutive

hours, including a thirty (30) minute unpaid lunch period per day.

(iii) Youth Supervisors, Youth Counselors and Dietary employees position classifications in Juvenile facilities - forty (40) hours, consisting of five (5) consecutive days of eight (8) hours, including a thirty (30) minute paid lunch period per day.

e) "Lunch Period" Employees who receive an unpaid lunch period and are required to work at their work assignments during such period and who are not relieved, shall have such time counted as hours worked for the purposes of Sections l(b) and l(c) above and shall be compensated at the appropriate compensatory straight or overtime rate, whichever may be applicable.

f) "Days Off" For employees working within position classifications and at facilities which require continuous coverage, scheduled work days and scheduled days off shall be consecutive, but may fall on any day of the work week.

g) "Tardiness and Absenteeism" The agency's current practices and policies regarding tardiness and absenteeism shall continue.

Section 2. General Provisions RC-9

a) "Consecutive Days and Hours" The regular hours of work each day shall be consecutive and the work week shall consist of five (5) consecutive days of work within regular reoccurring period of 168 hours consisting of seven (7) consecutive 24-hour periods. Exceptions to the above may exist in local supplementary agreements.

b) "Work Day and Work Week" The normal work day shall be eight (8) hours per day and the normal

work week shall be forty (40) hours per week. The present practice with regards to employees working a straight eight (8) hours with a paid half hour lunch period, or working a straight eight (8) hours with an unpaid half hour lunch period, or working a straight eight and one-half hours with a half hour unpaid lunch period, shall continue for the full term of this Agreement and it shall be considered as a forty-hour work week.

c) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time.

Employees who receive an unpaid lunch period and are not required to work at their work assignments during such period shall not have such time treated as hours worked for the purpose of computing overtime.

d) "Lunch Period" Employees who receive an unpaid lunch period and are required to work at their work assignments and who are not relieved shall have such time treated as hours worked for the purpose of computing overtime and shall be paid at the appropriate overtime rate.

e) "Tardiness and Absenteeism" The agency's current practices and policies regarding tardiness and absenteeism shall continue.

Section 3. General Provisions RC-14

a) "The Work Day and the Work Week" The normal work day shall consist of seven and one-half

consecutive hours and the normal work week shall consist of five (5) consecutive work days followed by two (2) consecutive days off. Exceptions to the above are subject to local level negotiations. Schedules normally requiring more than seven and one-half hours of work each day shall be negotiated where serious operational problems so dictate. If no agreement is reached, the issue shall be submitted to arbitration. Past practice may continue if required for such work schedules pending agreement or an arbitrator's decision.

b) "Meal Period" Work schedules shall provide for the work day to be broken at approximately mid-point by an uninterrupted, unpaid meal period of not less than thirty (30) minutes and no more than one (1) hour. However, this shall not preclude work schedules which provide for a paid meal period. Such regularly scheduled paid meal periods shall be treated as hours worked and shall be paid at the appropriate straight or overtime rate, whichever is applicable.

When employees who normally receive an unpaid meal period are required to work during that period and receive no equivalent time off during the same shift at a reasonable alternative time, they shall have such time treated as hours worked and shall be paid at the appropriate straight or overtime rate, whichever is applicable. Present practices regarding eating while on duty during meal periods shall remain in effect.

c) "Late Arrival and Unauthorized Absence" There shall be no general policy of docking for late arrival. Employees who are repeatedly late may be docked until the problem has been corrected over a reasonable period. However, this shall not limit the Employer's right to dock for unauthorized absence

and/or resort to the disciplinary procedure of this Agreement for excessive late arrival and/or unauthorized absence. The threshold between late arrival and unauthorized absence is one hour after the starting time.

d) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time.

e) "Overtime Procedure" Overtime shall be distributed as equally as possible among the employees who normally perform the work in the position classification in which the overtime is needed and within a work unit as mutually agreed to between the parties. It shall be distributed on a rotating basis among such employees in accordance with seniority, the most senior employee having the least number of overtime hours, regardless of whether the employee is full-time or part-time, being given first opportunity. If all employees available to work the overtime hours decline the opportunity, the Employer shall assign the overtime in reverse seniority order; the least senior employee who has not been previously directed by the Employer to work overtime shall be directed to work the hours until all employees have been required to work at which time the process shall repeat itself.

For the purpose of equalizing the distribution of overtime, an employee who is offered but declines an overtime assignment shall be deemed to have worked the hours assigned.

New and temporarily assigned employees shall be credited with the average overtime hours worked by all employees in the unit as of the date of hire or temporary assignment.

Section 4. General Provisions RC-28 (except Site Technicians I and II)

a) "The Work Day and the Work Week" The work week is defined as a regularly reoccurring period of 168 hours consisting of seven (7) consecutive 24-hour periods. The normal work day shall consist of seven and one-half (7 1/2) consecutive hours and the normal work week shall consist of five (5) consecutive days followed by two (2) consecutive days off except for rotating schedules. Schedules normally requiring more than seven and one-half (7 1/2) hours of work each day shall be negotiated where serious operational problems so dictate. If no agreement is reached, the issue shall be submitted to arbitration. Past practice may continue for such work schedules pending agreement or an arbitrator's decision. Those facilities maintaining rotating schedules shall not be obligated to pay for overtime for those regular work schedules that provide for six (6) or more consecutive days of work, unless employees on such schedules exceed forty (40) hours in the work week.

b) "Regular Work Schedule" All employees (except intermittent and per diem employees) shall be scheduled to work on a regular work schedule and each work shift shall have a regular starting and quitting time.

c) "Meal Period" Work schedules shall provide for the work day to be broken at approximately mid-point by an uninterrupted, unpaid meal period of not less than thirty (30) minutes and no more than one (1)

hour. However, this shall not preclude work schedules which provide for a paid meal period. Those employees who receive an unpaid meal period and are required to work at their work assignments and are not relieved for such meal periods shall have such time treated as hours worked for the purpose of computing overtime and shall be paid at the appropriate straight time or overtime rate, whichever may be applicable.

d) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time. Compensation shall be in cash at the appropriate rate unless mutually agreed otherwise.

e) "Overtime Procedure" Overtime shall be distributed as equally as possible among the employees who normally perform the work in the position classification in which the overtime is needed and within a work unit as mutually agreed to locally between the parties. It shall be distributed on a rotating basis among such employees in accordance with seniority, the most senior employee having the least number of overtime hours, regardless of whether the employee is full-time or part-time, being given first opportunity. If all employees available to work the overtime hours decline the opportunity, the Employer shall assign the overtime in reverse seniority order; the least senior employee who has not previously been directed by the Employer to work overtime shall be assigned to work the hours until all employees have been required to work at which time the process shall repeat itself.

For the purpose of equalizing the distribution of overtime, an employee who is offered but declines an overtime assignment shall be deemed to have worked the hours assigned.

New and temporarily assigned employees shall be credited with the average overtime hours worked by all employees in the unit as of the date of hire or temporary assignment.

f) "Late Arrival and Unauthorized Absence" There shall be no general policy of docking for late arrival. Employees who are repeatedly late may be docked until the problem has been corrected over a reasonable period. However, this shall not limit the Employer's right to dock for unauthorized absence and/or resort to the disciplinary procedure of this Agreement for excessive late arrival and/or unauthorized absence. The threshold between late arrival and unauthorized absence is one hour after the starting time.

Section 5. General Provisions RC-42 and Site Technicians I and II

a) "The Work Day and the Work Week" The work week is defined as a regularly reoccurring period of 168 hours consisting of seven (7) consecutive 24-hour periods. The normal work day shall consist of seven and one-half (7 1/2) consecutive hours and the normal work week shall consist of five (5) consecutive days followed by two (2) consecutive days off except for rotating schedules. Schedules normally requiring more than seven and one-half (7 1/2) hours of work each day shall be negotiated where serious operational problems so dictate. If no agreement is reached, the issue shall be submitted to arbitration. Past practice may continue for such work schedules pending

agreement or an arbitrator's decision. Those work sites maintaining rotating schedules shall not be obligated to pay for overtime for those regular work schedules that provide for six (6) or more consecutive days of work, unless employees on such schedules exceed 37 1/2 hours in the work week.

b) "Regular Work Schedule" All employees (except intermittent and per diem employees) shall be scheduled to work on a regular work schedule and each work shift shall have a regular starting and quitting time. However, where agency practice provides for seasonal work schedule changes, those changes may be implemented with a minimum five (5) work day notice to the Union and the employees. Such seasonal work schedule changes shall not be subject to negotiation with the Union. Subject to the operating needs of the agency, the Employer will attempt to utilize as many seasonal employees as possible on Saturdays and Sundays to allow regular employees to be scheduled off.

c) "Meal Period" Work schedules shall provide for the work day to be broken at approximately mid-point by an uninterrupted, unpaid meal period of not less than thirty (30) minutes and no more than one (1) hour. However, this shall not preclude work schedules which provide for a paid meal period. Those employees who receive an unpaid meal period and are required to work at their work assignments and are not relieved for such meal periods shall have such time treated as hours worked for the purpose of computing overtime and shall be paid at the appropriate straight time or overtime rate, whichever may be applicable.

d) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time

worked outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time. Compensation shall be in cash at the appropriate rate unless mutually agreed otherwise.

e) "Overtime Procedure" Overtime shall be distributed as equally as possible among the employees who normally perform the work in the position classification in which the overtime is needed and within a work unit as mutually agreed to locally between the parties. It shall be distributed on a rotating basis among such employees in accordance with seniority, the most senior employee having the least number of overtime hours, regardless of whether the employee is full-time or part-time, being given first opportunity. If all employees available to work the overtime hours decline the opportunity, the Employer shall assign the overtime in reverse seniority order; the least senior employee who has not previously been directed by the Employer to work overtime shall be assigned to work the hours until all employees have been required to work at which time the process shall repeat itself.

For the purpose of equalizing the distribution of overtime, an employee who is offered but declines an overtime assignment shall be deemed to have worked the hours assigned.

f) "Late Arrival and Unauthorized Absence" There shall be no general policy of docking for late arrival. Employees who are repeatedly late may be docked until the problem has been corrected over a reasonable period. However, this shall not limit the Employer's right to dock for unauthorized absence

and/or resort to the disciplinary procedure of this Agreement for excessive late arrival and/or unauthorized absence. The threshold between late arrival and unauthorized absence is one hour after the starting time.

Section 6. General Provisions RC-10, RC-62 and RC-63

a) "The Work Week" The work week is defined as a regularly reoccurring period of 168 hours consisting of seven (7) consecutive 24-hour periods. An RC-62 and RC-63 employee's normal work week shall consist of not more than forty (40) hours. Past practice at work locations requiring less than forty (40) hours in a normal work week may continue. The normal work week shall consist of five (5) consecutive days of work followed by two (2) consecutive days off except for rotating schedules consisting of six (6) or more consecutive days of work. Such rotating schedules may be maintained without the payment of overtime unless the employee works in excess of his/her normal work week within the measuring period used.

RC-10 only

An RC-10 employee's normal work week shall consist of not more than thirty-seven and one-half (37 1/2) hours. Past practice at work locations requiring less than thirty-seven and one-half (37 1/2) hours in a normal work week may continue. The normal work week shall consist of five (5) consecutive days of work followed by two (2) consecutive days off.

b) "Regular Work Schedule" Where current practice so provides, employees (except intermittent and per diem) shall be scheduled to work on a regular work schedule and each work shift shall have a regular starting and quitting time.

c) "Meal Period" Where current practice so provides or otherwise practicable, work schedules shall provide for the work day to be broken at approximately mid-point by an uninterrupted, unpaid meal period of not less than thirty (30) minutes and no more than one (1) hour. However, this shall not preclude work schedules which provide for a paid meal period. Those employees who receive an unpaid meal period, and are required to work at their work assignments and are not relieved for such meal periods shall have such time treated as hours worked for the purpose of computing overtime and shall be paid at the appropriate rate.

d) "Overtime Payment"

(i) Employees who are authorized and do work in excess of their normal work week in any one scheduled period as defined in sub-section (a), shall receive overtime credit for such hours. Procedures for the authorization of overtime shall be established by each agency within fifteen (15) calendar days from the effective date of this Agreement. Overtime in less than fifteen (15) minutes increments shall not be accrued.

(ii) Payment for such overtime credit shall be in cash or compensatory time at the discretion of the Employer. If such compensatory time request is granted, it shall be taken within the fiscal year it was earned at a time convenient to the employee and consistent with the operating needs of the Employer. However, accrued compensatory time not scheduled or taken by the end of the fiscal year shall be liquidated and paid in cash at the rate it was earned. Notwithstanding the above, employees who schedule compensatory time off by June 1st of the fiscal year shall be allowed to use such time through

August 1st of the following fiscal year. Employees who earn compensatory time after June 1st shall be allowed to use such compensatory time through August 15th of the subsequent fiscal year.

(iii) Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time.

RC-10 only

(1) Employees who are authorized and do work in excess of their normal work week in any one scheduled period as defined herein, shall receive credit for such hours as enumerated in this Section.

(2)(i) Hours after from thirty-seven and one-half (37.5) to forty (40) in the work week:

The employee and his/her immediate supervisor shall make every reasonable effort to avoid having the employee's weekly hours exceed thirty-seven and one-half (37 1/2) hours in the work week by adjusting hours within the work week at the discretion of the immediate supervisor, provided however, the employee's choice of taking the time off shall be considered by the immediate supervisor and shall not be unreasonably denied. In the event the employee's schedule cannot be altered to avoid working hours in excess of thirty-seven and one-half (37 1/2) but not more than forty (40) in the work week, payment for overtime hours worked between thirty-seven and one-half (37 1/2) but not more than forty (40) shall be in compensatory time.

Compensatory time off shall be scheduled by the Employer with due consideration given to the requests of the employee and the operating needs of the Agency. However, accrued compensatory time not scheduled or taken by the end of the fiscal year shall be liquidated and paid in cash at the rate it was earned. Notwithstanding the above, employees who schedule compensatory time off by June 1st of the fiscal year shall be allowed to use such time through August 1st of the following fiscal year.

(ii) Hours worked in excess of forty (40) in the work week: The payment of overtime hours worked in excess of forty (40) hours in the work week shall be in cash or compensatory time at the Employer's discretion. Compensatory time off shall be scheduled with due consideration given to the requests of the employee. However, accrued compensatory time not scheduled or taken by the end of the fiscal year shall be liquidated and paid in cash at the rate it was earned. Employees who earn compensatory time after June 1st shall be allowed to use such compensatory time through August 15th of the subsequent fiscal year.

Overtime in excess of forty (40) hours in the work week shall be earned at the employee's straight time rate. Overtime as authorized by the Employer in excess of thirty-seven and one-half (37 1/2) hours in the work week and assigned on Saturday or Sunday shall be earned at the rate of one and one-half (1 1/2) times the employee's straight time hourly rate.

e) "Overtime Procedure" Where practicable, overtime shall be distributed as equally as possible among employees who normally perform the work in the position classification in which the overtime is needed and within a work unit, regardless of whether the

employee is full-time or part-time, as mutually agreed locally by the parties. If current practice provides for a method for the equal distribution of overtime, it shall be maintained unless the parties agree otherwise.

(RC-10 only)

Where practicable, and when the work is not so individualized so as to preclude same, overtime shall be distributed as equally as possible among employees who normally perform the work in the position classification in which the overtime is needed and within a work unit, regardless of whether the employee is full-time or part-time.

f) "Late Arrival and Unauthorized Absence" There shall be no general policy of docking for late arrival. Employees who are repeatedly late may be docked until the problem has been corrected over a reasonable period. However, this shall not limit the Employer's right to dock for unauthorized absence and/or resort to the disciplinary procedure of this Agreement for excessive late arrival and/or unauthorized absence. The threshold between late arrival and unauthorized absence is one hour after the starting time.

g) "Consecutive Work Hours" (RC-10 only) The regular hours of work each day shall be consecutive except that they may be interrupted by a meal period.

Section 7. Hours of Work and Overtime - Aircraft Pilots Only (RC-62)

a) The Work Week

The normal work week shall be Sunday through Saturday and shall average five (5) days of work within a regular reoccurring period of 168 hours consisting of seven (7) consecutive 24-hour periods.

For purposes of calculation a normal work week shall consist of forty-eight (48) hours and no less than thirty seven and one-half (37 1/2) hours.

b) Meal Period

Where current practice so provides and work hours so dictate the work day shall be broken approximately midpoint by an uninterrupted, paid meal period of not less than thirty (30) minutes and not more than one (1) hour. However, this shall not preclude work schedules which provide for an unpaid meal period. Those employees who receive an unpaid meal period and are required to work at their work assignments and are not subsequently relieved for such meal periods shall have such time treated as hours worked for the computing of overtime and shall be paid at the appropriate overtime rate.

c) Overtime Payment

(i) Employees who are authorized and who are accountable to the Employer with the exception of stand-by (as enumerated in Section 22) in excess of one hundred sixty (160) hours during a twenty-eight (28) day cycle shall receive overtime credit of one and one-half (1-1/2) times the employee's straight time hourly rate for such hours. Procedures for the authorization of overtime shall be established by the agency within thirty (30) days from the effective date of this Agreement. Overtime in less than one-half (1/2) hour increments shall not be accrued.

(ii) Payment for such overtime credit shall be in cash or compensatory time at the discretion of the Employer. If such compensatory time request is granted, it shall be taken within the fiscal year it was earned at a time convenient to the employee and consistent with the operating needs of the

Employer. However, accrued compensatory time not scheduled or taken by the end of the fiscal year shall be liquidated and paid in cash at the rate it was earned. Notwithstanding the above, employees who schedule compensatory time off by June 1st of the fiscal year shall be allowed to use such time through August 1st of the following fiscal year.

d) Overtime Procedure. Where practicable, overtime shall be distributed as equally as possible among employees who normally perform the work in the position classification in which the overtime is needed and within a work unit, regardless of whether the employee is full-time or part-time, as mutually agreed locally by the parties. If current practice provides for a method for the equal distribution of overtime, it shall be maintained unless the parties agree otherwise.

e) Late Arrival and Unauthorized Absence. There shall be no general policy of docking for late arrival. Employees who are repeatedly late may be disciplined until the problem has been corrected over a reasonable period. However, this shall not limit the Employer's right to dock for unauthorized absence and/or resort to the disciplinary procedure of this Agreement for excessive late arrival and/or unauthorized absence. The threshold between late arrival and unauthorized absence is one hour after the starting time.

f) This Section shall not be construed as a guarantee or limitation on the number of hours per day or work week.

Section 8. No Guarantee or Limitation

This Article shall not be construed as a guarantee or limitation on the number of hours per day or work week. The regular hours of work each day shall be

consecutive except that they may be interrupted by a meal period.

Section 9. Overtime Payments (All Units except RC-10)

Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to sixteen (16) hours in a day. For hours worked in excess of sixteen (16) in a day, employees shall be paid double time. However, a full-time employee will not be eligible for pay at the applicable overtime rate for all time worked outside of the employee's normal work hours and/or work days, pursuant to this Article, only under the following circumstances:

a. If a full-time employee is charged with a UA (unexcused absence) or XA (unexcused-unreported absence), on a normal workday and the employee works on his/her day off during that same work week – the employee will receive overtime at the straight time hourly rate for time worked on his/her day off until the employee has worked in excess of thirty-seven and one-half hours in RC-14, RC-28, RC-42; and in excess of the employee's normal work week for RC-6, RC-9 and RC-62/63.

b. If a full-time employee takes a day off without pay, except RC-09 residential schools furlough days during the academic year, for which he/she is not eligible for a Leave under Article VI, Section 3 or Article XXIII of the Master Contract, for a normal workday and the employee works on his/her day off during that same work week – the employee will receive overtime at the straight time hourly rate for time worked on his/her day off until the employee has

worked in excess of thirty-seven and one-half hours in RC-14, RC-28, RC-42; and in excess of the employee's normal work week for RC-6, RC-9 and RC-62/63.

c. If a full-time employee was suspended without pay on a normal workday and the employee works on his/her day off during that same work week – the employee will receive overtime at the straight time hourly rate for time worked on his/her day off until the employee has worked in excess of thirty-seven and one-half hours in RC-14, RC-28, RC-42; and in excess of the employee's normal work week for RC-6, RC-9 and RC-62/63.

d. Suspension time will not be imposed in such a manner so as to avoid the payment of overtime pursuant to this Article.

e. Overtime rotation procedures shall not be affected by these procedures. The normal overtime rotation will not be changed or altered among eligible employees in order to assign overtime hours to employees who would not be eligible for overtime pursuant to Paragraph 2 of this Section.

Section 10. Inconvenience Pay for Work Beyond Five Days on Day Off Rotation Schedules

In the event of a day off rotation schedule only, an employee who works more than five (5) days in any given seven (7) day period even though it overlaps work weeks, shall be paid inconvenience premium pay of 50 cents per hour above the regular rate of pay on each of those days worked over five (5) days within said seven-day period. Inconvenience premium pay will increase to $1.00 per hour effective July 1, 2001, and to $1.50 per hour effective July 1, 2002. There shall be no double payment or calculation of the same days within a given seven-day period. Provided,

however, if an employee works more than the normally scheduled hours or days as provided in this Agreement, said employee shall be paid at the overtime rate of time and one-half for said work (e.g., in any work week that an employee works on a day or hours he/she would normally be off under the days off rotation schedule, said employee shall be paid overtime at time and one-half for said time worked, provided he/she worked the normally scheduled hours or days or was off on a day which counts as the time worked as set forth in Section 13).

Where such has not previously been specified, the parties shall meet within thirty (30) days at each of the facilities to incorporate into the supplemental agreement the specific days in each rotation scheduled for which the inconvenience premium pay shall be paid. In those locations where a 6-2 schedule exists, the 6th day shall be the day in which the premium is paid, whenever said 6th day occurs.

Section 11. Rest Periods

There shall be two (2) rest periods of fifteen (15) minutes each during each regular shift; one during the first half of the shift and one during the second half of the shift, except that in RC-6 such rest periods shall only be provided where it is the current practice. Where a single thirty (30) minute break has been the past practice and continues to be mutually agreeable, it shall be scheduled per the past practice.

Employees working a four (4) day work week approved under Personnel Rule 303.300 shall receive two (2) rest periods of twenty (20) minutes each during each regular shift; one during the first half of the shift and one during the second half of the shift.

Employees shall have the right to leave the work site during such period, except for RC-6 bargaining unit employees, and except that RC-9 employees shall not leave the facility ground.

(RC-10) The current practices regarding rest periods shall continue.

The Employer will allow nursing mothers a private room and flexibility with respect to scheduling lunch and break periods for the purpose of breast feeding or pumping breast milk, whenever possible.

If evidence demonstrates that circumstances prevented an employee from receiving a rest period or resulted in a rest period being interrupted, and the Employer does not authorize an alternative time, the employee shall be entitled to compensatory time.

Section 12. Flexible Hours

It is the policy of the State to implement to the fullest extent practicable the flex-time positions authorized by P.A. 79-558. An Agency's flex-time positions shall be divided as equitably as possible. Where more employees request flex-time than positions available, the employee who demonstrates the greatest personal need shall have preference. Should these employees display the same or similar personal need(s), the flex-time schedule shall be granted based upon seniority. The scheduling of flex-time shall be by mutual arrangement between the employee, and his/her supervisor.

Section 13. Four Day Work Week

In lieu of the normal work week as defined in Section 1, 2, 3, 4, 5 and 6 of this Article, an employee may request a work week composed of four (4) consecutive days of relatively equal length, followed by

three (3) consecutive days off, or reasonable variations thereof. If the agency determines its own needs may appropriately be met by such requested schedule, it may request approval of any such schedule under Personnel Rule 303.300. Nothing herein precludes the parties from negotiating four (4) day work week schedules in Agency or Local Supplementary Agreements.

The negotiation of nine (9) day work schedules shall be appropriate for agency and/or local supplementary negotiations in those instances where supplemental agreements contain such provisions. In other instances the parties may by mutual agreement negotiate nine (9) day work schedules in agency and/or local supplementary agreements.

Section 14. Intermittent Schedules

Intermittent classifications shall be utilized only for job assignments that are characterized by periodic, irregular or seasonal scheduling.

Section 15. Compensatory Time (RC-6, 9, 14, 28 and 42)

Overtime shall be paid in cash unless an employee requests compensatory time off, at the rate it was earned either straight time or at the applicable overtime rate. Such request shall be considered and granted or denied at the discretion of the Employer. The employee shall make his/her choice known to the Employer not later than the end of the work week in which the overtime was earned.

If such compensatory time request is granted, it shall be taken within the fiscal year it was earned at a time convenient to the employee and consistent with the operating needs of the Employer.

Accrued compensatory time not used by the end of the fiscal year in which it was earned shall be liquidated and paid in cash at the rate it was earned. Notwithstanding the above, employees who schedule compensatory time off by June 1st of the fiscal year shall be allowed to use such time through August 1st of the following fiscal year. Employees who earn compensatory time after June 1st shall be allowed to use such compensatory time through August 15th of the subsequent fiscal year.

(RC-10) Compensatory time off shall be at the rate it was earned either straight or time and one-half whichever is applicable.

Section 16. Time Off

Time off for any holidays or accumulated holidays shall be counted as time worked for overtime computation.

Section 17. Overtime Scheduling (RC-6 and 9)

Employees shall work overtime when overtime is required. In RC-6 and 9, overtime assignments shall be made in accordance with the following procedure:

a) "Overtime Assignment" Overtime shall be assigned by seniority in the position classifications regularly assigned to the performance of the work and by designated units, i.e., ward, program, work location, facility, etc., mutually agreed to at the facility level.

b) "Equalization" The initial distribution of voluntary overtime will be based on seniority. After the initial distribution, it shall be distributed and equalized on a rotating basis to those employees having the least amount of overtime, regardless of whether the employee is full-time or part-time. After

the initial distribution seniority prevails only in cases of ties.

An employee by written notice to the Employer may waive his/her right to be offered overtime assignments and shall not be included in the overtime rotation. Such waiver, however, shall not exclude the employee from any possible mandatory overtime schedule. Once on waiver, an employee may not change his/her status except after a three (3) month period.

Overtime work offered but refused shall be recorded and given equal consideration as overtime actually worked in regards to eligibility for future overtime assignments.

c) "Overtime Notification"

(i) If the Employer has reasonable advance notice of an employee's absence which causes a full shift overtime assignment, or if overtime is for a full shift for other reasons, such overtime assignments shall be equalized and offered among all employees in the appropriate position classification within the agreed unit.

If, after a reasonable attempt, an employee cannot be contacted for overtime, the next eligible employee shall be contacted. However, the employee by-passed shall not be credited with any hours worked.

(ii) However, if reasonable advance notice was not forthcoming and/or overtime is for a period less than a full shift, such overtime assignment shall be equalized and offered to those employees already at work on that shift whose work schedule shall be extended by such assignment.

d) "Employees Entering Overtime Unit" When the name of an employee becomes eligible for overtime in

a unit, he/she shall be credited with the average of the total hours of the group as of the effective date he/she enters a unit.

e) "Temporary Assignment Overtime" In the event an employee is temporarily assigned to a different classification for a period exceeding five (5) consecutive work days he/she shall be credited with the average number of hours of the employees in that classification in the unit on the effective date of change, for the purpose of overtime distribution.

Upon his/her return to his/her regular position classification, he/she shall be credited with his/her past number of hours plus the credited hours from his/her temporary assignment.

f) (1) "Voluntary Overtime Beyond Rotation Unit" If all employees in an equalizing group are offered overtime and refuse, then prior to forcing an employee to work such assignment, the Employer may assign such overtime to an employee, or employees not in the equalizing group who volunteered for such assignment.

The Employer is not required to solicit, offer, or use employees who volunteered for overtime prior to assigning overtime on a mandatory basis, or be bound by Section 17(b) above, with regards to the Section listed below.

If more than one (1) employee volunteers, overtime shall be distributed in the following priority:

(i) Employees in the same classification that the work is to be performed but in a different equalization area.

(ii) Employees in the same classification series.

(iii) Employees in the same bargaining unit.

(iv) Employees in a different AFSCME bargaining unit.

(v) Employees in none of the above.

(2) "Voluntary Overtime Beyond Rotation Unit" – Department of Human Services, Division of Disability and Behavioral Health Services Only. If all employees in an equalizing group are offered overtime and refuse, then prior to forcing an employee to work such assignment, the Employer shall assign such overtime to an employee, or employees not in the equalizing group who volunteered for such assignment. At the facility level, the Union and the Employer may, by mutual agreement, opt not to initiate a voluntary overtime system beyond the rotation unit system, in which case paragraph (1), above, will apply.

Procedures for voluntary assignment beyond the rotation unit shall be a subject for facility supplementary negotiations in the Department of Human Services, Division of Disability and Behavioral Health Services only.

g) "Mandatory Overtime" The parties agree that mandatory overtime should be the exception and not the norm of the State operations and employees shall not be disciplined for refusing a mandation to work overtime hours unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer, including unexpected absences discovered at the commencement of a shift as provided in the Mandatory Overtime MOU. If all employees refuse a voluntary overtime assignment, mandatory overtime shall be assigned in reverse seniority order, on an assignment, not on number of hours, basis. The least senior employee shall not be assigned the

overtime each time all refuse. The first total refusal of overtime will be assigned to the least senior employee, the second refusal to the next least senior employee and so on through the list, up through the fifteenth least senior employee, or fifty (50) percent of those in the equalizing group, whichever is less, at which time the Employer would revert back to the least senior employee again.

The above restrictions shall not be applicable, however, and mandatory overtime may be assigned on a rotating basis up the seniority list in an equalizing group if following such restrictions would cause an employee to be forced to work overtime more than once in a 30-day period.

h) "Emergencies" Employees shall not be required to work more than two (2) consecutive shifts except in very extreme emergencies and then only after a proper period of paid time for sleep and rest, nor shall employees be required to work seven (7) consecutive days (excluding RC-9 employees on rotating schedules whose regular schedule provides for working seven (7) consecutive days) except in an emergency.

This Section may be supplemented by the parties in the Supplementary Negotiations, and shall not be considered a bar to facility agreements to count voluntary overtime against the mandatory rotation.

Section 18. Overtime Information Provided to the Union

The Union, on a quarterly basis or more frequently if current practice provides, or if the parties mutually agree, shall be given a list of the overtime hours worked, the employees offered overtime, the employees directed to work overtime, the employees who worked overtime and the number of hours each

employee so worked. The procedure described herein shall apply except in extraordinary situations which preclude its use.

Section 19. Supplementary Agreements

The parties shall reduce to writing what current scheduling practices prevail with respect to the length of the normal work week, starting and quitting times, days off, shifts or the rotation thereof. Thereafter, where changes in schedules affecting bargaining unit employees are warranted by programmatic or operational need, the Employer shall notify the Union and, upon timely request, negotiate with it concerning such changes. Such negotiations shall be for ninety (90) days, at which time either party may move the matter to arbitration pursuant to the Memorandum of Understanding entitled "Special Grievances". Nothing herein shall prohibit the parties from mutually agreeing to advance to arbitration prior to the completion of ninety (90) days.

Disputes over such changes being made for programmatic or operational needs shall be subject to Article V (Expedited Procedure). Except in RC-10, if emergency situations so dictate, temporary work schedule changes may be implemented by the Employer pending final resolution of the dispute. Changes for reasons other than programmatic or operational needs may be made only by mutual agreement.

Section 20. Roll-Call Pay

Correctional Officers and other employees required both to stand roll-call and remain at the facility beyond eight (8) hours per day for such roll-call shall be paid for all such time over and above their regular salary at their straight time rate. Effective July 1,

2010, Correctional Officers and other employees required both to stand roll-call and remain at the facility beyond eight (8) hours per day for such roll-call shall be paid for all such time over and above their regular salary at the applicable overtime rate. An employee required to stand roll-call shall declare that he/she receive all roll-call compensation as compensatory time or cash. Such declaration will remain in effect unless changed by the employee prior to July 1st of each subsequent fiscal year.

Section 21. Call-Back Pay

Any employee called back to work outside of his/her regularly scheduled shift or on his/her scheduled days off shall be paid a minimum of two (2) hours pay at the applicable rate. Work schedules will not be changed because of call-back time in order to avoid overtime or straight time pay. If the employee has been called back to take care of an emergency, the Employer shall not require the employee to work for the entire two (2) hour period by assigning the employee extra non-essential work.

Section 22. Stand-By Pay

An employee is entitled to stand-by pay if he/she is required by the Employer to be on stand-by; that is, to keep the Employer informed of his/her whereabouts on off-duty time and to be available for possible recall for work, either on a day the employee was not scheduled to work or for a period of time after completing the employee's work day. The mere use or possession of mobile communication device does not entitle an employee to stand-by pay. An employee entitled to stand-by pay under this Section shall receive four (4) hours pay at the applicable rate for each day or portion thereof of stand-by whether required to work or not.

An employee who is required by the Employer to be on standby for New Year's Day, Memorial Day, July 4th, Labor Day, Christmas or Thanksgiving Day is entitled to six (6) hours pay. Provided, however, such employee shall not receive stand-by pay if he/she was not available upon call by the Employer during such stand-by time or did not keep the Employer informed of his/her whereabouts.

Current CMS practices (only the Department of CMS employees) providing for a volunteer response program, whereby employees are not required to be on stand-by, but who perform work via telephone during their normal off hours shall continue to be paid a minimum of one hour's pay.

(RC-10 only) In the event the Employer initiates or seeks to initiate a Stand-by procedure (which shall be defined as a requirement to keep the Employer informed of his/her whereabouts on off-duty time and to be available for possible recall for work, either on a day the employee was not scheduled to work or for a period of time after completing the employee's work day), the parties shall negotiate the impact of such decision.

Section 23. Daylight Savings Time

Employees working during the shift when Daylight Savings Time changes to Standard Time will receive the appropriate rate of premium pay for the extra hour worked. However, when Standard Time changes to Daylight Savings Time, employees will be allowed to use accumulated benefit time, excluding sick leave, to cover the one (1) hour reduction in work time.

Section 24. Travel for Required Training

Overtime will be paid to all employees required to travel for training, orientation, or professional development when travel is in excess of their normal commute and outside their normal work hours. Where current practice exists, employees who are paid overtime for travel during their normal commute time outside normal work time, the practice shall continue.

ARTICLE XIII
Insurance, Pension, Employee Assistance and Indemnification

Section 1. Health Insurance

During the term of this Agreement, the Employer shall continue in effect, and the employees shall enjoy the benefits, rights and obligations of the Group Insurance Health and Life Plan applicable to all Illinois State employees pursuant to the provisions of the State Employees Group Insurance Act of 1971 as amended by P.A. 90-65 and as amended or superseded. Employee Health Care Benefits shall be as set forth in Appendix A of this Agreement.

Section 2. Managed Care Plans

In accordance with the provisions of Federal law and the regulations thereunder, if applicable, the Employer shall make available the option of membership in qualified managed care plans to employees and their eligible dependents who reside in the service area of qualified managed care plans. Each year the Employer will send a notice to the mailing address of record of all employees informing them of the benefit choice period which shall extend for at least 30 days from the date of the notice. The letter shall inform employees of the website(s) on which information

regarding the alternative plans is available and that any individual who wants a hard copy of the information shall be provided such copy upon request.

Section 3. Pensions

During the term of this Agreement, the Employer shall continue in effect, and the employees shall enjoy the benefits, rights and obligations of the retirement program provided in the Illinois Pension Code, Illinois Compiled Statutes, Chapter 40 and as amended or superseded.

Effective January 1, 1992, the Employer shall make the employee contribution to the appropriate Retirement System for all employees in an amount equal to the coordinated rate (4% for covered employees; 5.5% for covered employees in the alternative formula), as an offset to a salary increase.

The employee contributions shall be treated for all purposes in the same manner and to the same extent as employee contributions made prior to January 1, 1992, consistent with Article 14 of the Illinois Pension Code.

Effective with retirements on or after January 1, 1998, all bargaining unit members covered by the State Employees Retirement System (SERS) will receive the following pension benefits:

1. For coordinated SERS employees on the standard formula, a flat formula of 1.67% of Final Average Salary (FAS) per year of service.

2. For non-coordinated SERS employees on the standard formula, a flat formula of 2.2% of Final Average Salary (FAS) per year of service. Effective July 1, 2000, for those employees enrolled in the SERS, with past service under the TRS as State

Educators, the State will pay the cost of upgrading their past TRS service to the 2.2% TRS formula.

3. For employees eligible to receive a pension under the SERS Alternative Formula, a pension based on the higher of the Final Average Salary (FAS), or the rate of pay on the final day of employment.

Effective with retirements on or after January 1, 2001, all bargaining unit members covered by the SERS or TRS will receive the following pension benefits:

1. Employees on the SERS or TRS standard formula can retire based upon their actual years of service, without penalty for retiring under age 60, when their age and years of service add up to 85 (in increments of not less than one month). Employees eligible to retire under this "Rule of 85" will be entitled to the same annual adjustment provisions as those employees currently eligible to retire below age 60 with 35 or more years of service.

2. For coordinated SERS employees on the alternative formula, a flat formula of 2.5% per year of service, based on the higher of the Final Average Salary, or the rate of pay on the final day of employment, up to a maximum of 80% of FAS.

3. For non-coordinated SERS employees on the alternative formula, a flat formula of 3.0% per year of service, based on the higher of the Final Average Salary (FAS), or the rate of pay on the final day of employment, up to a maximum of 80% of FAS.

4. Coordinated and non-coordinated SERS employees on the alternative formula will make the following additional contributions to the pension

system: 1% of compensation effective January 1, 2002; 2% of compensation effective January 1, 2003; and 3% of compensation effective January 1, 2004.

5. SERS Educators and other employees who work an academic year and are paid only during the academic year, and not paid on a 12-month basis, shall be credited for such past and/or future service with a full year of SERS service for each academic year.

Effective January 1, 2005, employees shall make half the employee contribution to the appropriate Retirement System in an amount equal to the coordinated rate (2% for covered employees; 2.75% for covered employees in the alternative formula).

Effective January 1, 2006, employees shall make the employee contribution to the appropriate Retirement System in an amount equal to the coordinated rate (4% for covered employees; 5.5% for covered employees in the alternative formula).

Laid off employees, employees on leave for Union office pursuant to Article XXIII, Section 10, or employees who take time off for Union activities pursuant to Article VI, Section 3, shall be allowed to purchase pension credit for the period of such layoff, Union leave or time off for Union business pursuant to the guidelines set forth in the side letter on pension credits.

Section 4. Retiree Health Insurance

Retiree health care benefits shall be as set forth in Appendix B of this Agreement.

Section 5. Employee Assistance Program

The Union shall administer an Employee Assistance Program (EAP) for all AFSCME represented

employees. Management shall refer bargaining unit employees to the PSP program administered by AFSCME. Employees may contact the PSP program at (800) 647-8776.

Section 6. Indemnification

A. The parties agree that bargaining unit employees have the right to request representation and indemnification through the Illinois Attorney General's office in the event they are defendants in civil liability suits (including civil contempt) arising out of actions taken or not taken in the course of their employment as State employees. The Attorney General's office shall make the decision to represent and indemnify such employees in accordance with existing statutory provisions and authorization contained therein.

B. In the event that a Department of Children and Family Services (DCFS) employee is subject to a Rule to Show Cause why he/she should not be held in criminal or civil contempt, DCFS shall provide and pay for representation in the following circumstances:

1. The Attorney General has declined to appear and defend the action after receiving a timely request to do so; and

2. DCFS, in its sole discretion, determines that the employee acted properly, and within the scope of his/her employment.

DCFS shall employ an attorney of its choice to appear and defend the employee, and shall pay the employee's court costs and attorney's fees; DCFS shall not pay any fines or other penalties that are assessed against the employee.

The employee shall be required to cooperate with the Department during the course of any litigation of any claim arising under this provision, and the representation provided shall be conditioned upon such cooperation.

If DCFS does not provide representation to an employee subject to a Rule to Show Cause why he/she should not be held in civil contempt and a court or jury subsequently finds that the act or omission of the State employee was within the scope of employment and was not intentional, willful or wanton misconduct, or the case is dismissed the employee's court costs, litigation expenses and attorneys' fees shall be reimbursed pursuant to Section 2(b) of the State Employee Indemnification Act, to the extent allowable thereunder, unless an employee's suspension or discharge for the same act which gave rise to the contempt proceedings is subsequently sustained.

If DCFS does not provide representation to an employee subject to a Rule to Show Cause why he/she should not be held in criminal contempt and a court or jury subsequently finds the employee not guilty and finds that the act or omission of the State employee was within the scope of employment and was not intentional, willful or wanton misconduct, or the case is dismissed DCFS shall reimburse the employee's court costs, litigation expenses and attorneys' fees to the extent approved by DCFS as reasonable, and to the extent such costs are not otherwise reimbursable pursuant to the State Employee Indemnification Act, unless an employee's suspension or discharge for the same act which gave rise to the contempt proceedings is subsequently sustained.

ARTICLE XIV
Temporary Assignment

Section 1. Temporary Assignment

The Employer may, within the provisions of this Article, temporarily assign an employee to perform the duties of another position classification. The Employer will attempt to assign temporary assignment to the employees in the next lower classification in the series in which the temporary assignment occurs and to equitably distribute such assignments on a rotating basis giving due consideration to seniority and the operating needs of the agencies. Rotation systems mutually agreed to in local level agency supplemental negotiations shall continue. The time limits contained herein shall apply when an employee performs the duties and/or is held accountable for responsibilities not considered a normal part of his/her regular position classification whether or not those duties are those which distinguish a higher level position classification; however, to be eligible for temporary assignment pay the employee must be directed to perform duties or the duty which distinguish the higher level position classification and/or be held accountable for the responsibility of a higher level position classification.

The mere absence of an employee does not automatically entitle another employee to temporary assignment pay unless the employee otherwise qualifies for such pay under the criteria established in this Article.

For Public Service Administrators temporarily assigned to non-bargaining unit positions (excluding RC-6 and RC-9) the time frames set forth in Section 3 shall not apply, but in no event shall exceed nine (9) months, unless mutually agreed otherwise.

Section 2. Payment

An employee temporarily assigned to a position classification in an equal or lower pay grade than his/her permanent position classification shall be paid his/her proper permanent position classification rate. If the employee is temporarily assigned to a position classification having a higher pay grade than his/her permanent position classification, the employee shall be paid as if he/she had received a promotion into such higher pay grade under Article XXXII, Section 2 of this Agreement, subject to Section 4 below. Employees shall not receive temporary assignment pay for paid days off except if the employee is given such assignment for thirty (30) continuous or more days and such days off fall within such period of time and the employee works 75% of the time of the temporary assignment.

Employees who are bi-lingual or have the ability to use Braille and whose job descriptions do not require that they do so shall be paid temporary assignment pay pursuant to this Article and at the rate provided in Article XXXII, Section 10 of this Agreement when required by the Employer to perform duties requiring such abilities.

Section 3. Time Limits

The time limits for temporarily filling a position classification will be as listed in this Section and in terms of work days or calendar months. The time limit herein may be extended by mutual agreement of the parties.

a) While the Employer posts and fills a job vacancy for a period of sixty (60) days from the date of posting.

b) While an absent regular incumbent is utilizing sick leave, or accumulated time (vacation, holidays, personal days).

c) Up to thirty (30) work days in a six (6) calendar month period while a regular incumbent is on disciplinary suspension or layoff.

d) While a regular incumbent is attending required training classes.

e) Up to six (6) months while a regular incumbent is on any illness or injury, Union or jury leave of absence. Extension of said time limit shall not be unreasonably denied.

f) Up to sixty (60) work days in a twelve (12) month period for other leaves, or where there is temporary change in work load, or other reasonable work related circumstances.

Extension of said time limit shall not be unreasonably denied.

Section 4. Payments Due

For temporary assignment except those to relieve an employee for a rest period(s) or a meal period, the Employer shall pay the employee the higher rate as set forth in Section 2 above for the full time of such assignment(s). For the purpose of calculation, any temporary assignment of less than one-half day shall be considered one-half day and any temporary assignment of more than one-half but less than a full day shall be considered a full day.

The Employer shall not split duties or rotate or reassign other employees to any specific temporary assignment in order to circumvent the payment provisions of this Agreement.

Section 5. Detailing

The Employer reserves the right to detail bargaining unit employees subject to the following understandings:

a) Detailing is a temporary transfer of an employee to a work assignment within his/her position classification geographically removed from the employee's normal work site.

b) Employees shall not be detailed for more than six (6) work weeks in four (4) calendar months, unless otherwise agreed; provided that such limitation shall not apply where there are abrupt and short term increases in unemployment or welfare caseloads, employees in training, disaster, or other extraordinary circumstances beyond the Employer's control. A position shall not be filled by detailing for more than fifteen (15) work weeks. The Union will agree to reasonable extensions where operational needs so dictate.

Management reserves the right to make temporary assignments to detailed employees.

c) Details shall be offered to qualified employees in the order of seniority. If there are no volunteers, detailing shall be rotated among qualified employees in inverse seniority order. *(RC-10 only) Subject to the demonstrable operating needs of the Agency, details shall be offered to qualified employees in the order of seniority. If there are no volunteers, detailing shall be rotated among qualified employees in inverse seniority order.*

d) The Employer will attempt to avoid detailing when an assignment will cause an undue hardship on an employee.

Section 6. Return to Permanent Assignment

When an employee returns from a temporary assignment, he/she shall be allowed reasonable time to catch up, check and integrate the work of his/her regular assignment.

Section 7. Criteria for Promotion

It is not the Employer's intention to use temporary assignment to favor or specially qualify certain employees for future promotional opportunity (except in RC-10). However, time in temporary assignment, if included on CMS-100B, shall be given appropriate consideration by the Department of Central Management Services.

If the employee who has been temporarily assigned is selected for the posted vacancy, the employee shall have his/her creditable service date adjusted to reflect the first date on which he/she was temporarily assigned without interruption. Such uninterrupted time in a temporary assignment shall be credited in determining semi-automatic promotions, if such employee has successfully performed the duty or duties which distinguish the position to which the employee has been temporarily assigned.

Section 8. Indefinite Assignments

Temporary job assignment changes within the employee's same position classification shall not be of indefinite duration.

ARTICLE XV
Upward Mobility Program

Section 1. Goals and Priorities

The State of Illinois and AFSCME are committed to improving career advancement opportunities for

employees in classifications listed in Schedule A. It is the goal of the State to provide employees with training and promotional opportunities through the Upward Mobility Program.

In the interest of enhancing the ability of employees to qualify for positions targeted in the Upward Mobility Program, the State and AFSCME will: (a) initiate and/or identify training programs to allow career paths; (b) contract for or provide course offerings that satisfy the requirements necessary for career movement; (c) offer prior learning assessment services to assure proper credit to employees for the skills and knowledge they have attained; and (d) publicize, counsel and otherwise encourage employees to pursue career opportunities within the program.

Further, the parties agree to seek college credit or continuing education units for courses offered through the Upward Mobility Program.

In order to assist the State in achieving the goals set forth above, an Advisory Committee comprised of an equal number of representatives from the Union and the Employer shall oversee the Program. The Committee's mission shall be to develop recommendations regarding which position classifications are appropriate for training programs contemplated in paragraph 2, to identify the publicity and counseling efforts necessary for implementation, and to identify the providers of services in (a), (b), (c) and (d) above. Targeted position classifications may be within any existing AFSCME bargaining unit or may be classifications which represent a bridge to career advancement outside any AFSCME bargaining unit for AFSCME bargaining unit employees.

Section 2. Financing

For FY 2014, the allocation shall be 5 million. For FY 2015, the allocation shall be 5 million.

The Upward Mobility Program funds shall be disbursed for the purpose of establishing and implementing training initiatives as outlined in Section 1. It is understood by both the State and Union that the Upward Mobility Program is designed to supplement existing agency training and development programs.

Section 3. Courses of Instruction

A. Employees who have completed a counseling program and filed an individual career development plan for a targeted classification shall be entitled to pre-paid tuition (subject to Paragraph B, below) for any approved courses provided at the local educational institutions.

B. Courses and training programs offered under the auspices of the Upward Mobility Program shall be available at no charge to employees participating in the program subject to the availability of funds and the policy guidelines established by the Committee.

C. Certified employees who apply to the Upward Mobility Program and are not accepted due to availability of funds shall be placed on a waiting list. Upon application, the employees on the waiting list shall be permitted to take a test for an Upward Mobility Program targeted title pursuant to guidelines established by the Advisory Committee. Employees successfully completing the test shall be granted certificates and placed on the appropriate eligibility list. Employees not passing the test shall remain on the waiting list for entrance into the program.

Section 4. Certificates

Once a certificate of completion is issued for skills associated with targeted positions under this program, employees shall be placed on a central list from which selection shall take place. Subject to Article XVIII, Section 2 and Article XIX, Section 5 work location priorities, the most senior employee appearing on the list from the agency in which the vacancy occurs shall be selected for the position. If no employee from the agency appears on the list, the most senior employee from all other agencies shall be selected for the position. The Director of Central Management Services, with the advice and consent of the Advisory Committee, shall designate the classifications for which a certificate and/or a credential shall be issued. The Advisory Committee shall review the requirements (credit-hours, proficiency tests, and electives) for such certificates. The certification programs must meet necessary educational standards for accreditation.

Section 5. Availability of Training

Subject to guidelines adopted by the Director of Central Management Services, with the advice and consultation of the Advisory Committee, participation in training programs will be available on a first come first served basis. Policies granting time off for courses shall be similarly established, to supplement existing agency policies.

The Advisory Committee will seek to increase accessibility by obtaining providers in various areas of the State.

Section 6. Impact on Bargaining Units

It is expressly understood that for the purposes of this program, including the selection of employees for

certificated positions, the limits and distinctions between AFSCME bargaining units are hereby waived.

Section 7. Job Opportunity Information

In order to maximize employee awareness of all job opportunities, the Department of Central Management Services shall maintain a computerized central listing of all available job openings referenced in Section 1 of this Article in agencies subject to the Personnel Code and shall seek to ensure ready access to such information for all employees.

Section 8. Filling of Vacancies

1) All permanent vacancies of titles included in the Upward Mobility Program subject to the AFSCME Collective Bargaining Agreement shall be posted pursuant to the contractual procedures as delineated in Article XIX, Sections 1 and 2. Such postings shall indicate that the title is an UMP target title.

2) Employees interested in a position within their own agency must bid in accordance with agency work location designations as delineated in Article XIX, Section 5 and specific agency Supplemental Agreements.

3) Employees will be placed on eligibility lists for their targeted title in designated counties as follows:

a) Employees shall be allowed to select in writing up to three counties of preference for each job title in which they earn a certificate or credential.

b) An employee who has earned a certificate and/or credential will automatically be placed on the Upward Mobility Program eligibility list for that job title at the time he or she indicates the initial county preferences pursuant to Section 3(a) of this Section.

c) Employees may change county preferences during the life of this Agreement by contacting the Department of Central Management Services, Division of Examining and Counseling in writing to indicate which county(s) they desire to have added or deleted.

d) An employee may, on his or her own initiative, contact an agency to indicate, in writing, a preference beyond the three counties. This written request must be made for a specific position during the posting period and the individual will be treated as though they were on the eligibility list for that position.

4) Vacancies for promotion to certificate titles will be filled in accordance with Article XV, Section 4. Such selection shall be in the following order of priority:

a) Agency bidders within the work location or facility, whichever is applicable. Employees with a certificate shall be considered and selected on the same basis as other qualified and eligible bidders (pursuant to Article XIX) in the next lower position classification within the position classification series from the bargaining unit in which the vacancy occurs.

b) Agency bidders within the same county as the work location or facility with a certificate unless the supplemental agreement provides otherwise.

c) Agency employees on the Upward Mobility Program eligibility list with a certificate not eligible to bid under Sections 4a and 4b.

d) Employees with a certificate from other agencies on the Upward Mobility Program eligibility list pursuant to Section 3.

e) If no employees are on an Upward Mobility Program eligibility list, such vacancies shall be filled in accordance with Article XIX.

Selection among eligible employees shall be in accordance with Article XVIII, Section 2. Seniority for targeted positions in bargaining units covered by this agreement shall be determined based upon the definition of seniority for the bargaining unit of the targeted title for agency employees. Seniority for employees of other agencies shall be their continuous service date. Selection among candidates for positions outside a bargaining unit covered by this agreement shall be in accordance with Article XVIII, Section 2(b).

5) Filling of vacancies for non-bargaining unit titles shall be filled from the Upward Mobility Program eligibility list first from the agency and then from other agencies in accordance with seniority as applied in Article XVIII, Section 2(b).

6) Filling of vacancies of credential titles will be filled in accordance with Article XV, Section 4. Such selection shall be in the following order of priority:

a) Credentialed employees bidding on a position, or who are on an appropriate Upward Mobility Program eligibility list within their current bargaining unit, or who are bidding on a position to which they have contractual rights shall be considered and selected on the same basis as other qualified and eligible bidders who are not credentialed employees.

b) Credentialed employees bidding, or who are on an appropriate Upward Mobility Program eligibility list for a position to which they otherwise have no contractual rights, shall be selected before the

Employer selects any other applicant who has no contractual rights.

Selection among eligible employees shall be in accordance with Article XVIII, Section 2. Seniority for targeted positions in bargaining units covered by this agreement shall be determined based upon the definition of seniority for the bargaining unit of the targeted title. Selection among candidates for positions outside a bargaining unit covered by this agreement shall be in accordance with Article XVIII, Section 2(b).

For the purpose of this Section only, trainee positions which are credential titles shall be considered as part of the same bargaining unit and classification series as the target position for which the trainee title was established.

7) The employing agency will be responsible for handling waivers of offers of vacancies by eligible employees. A written waiver is required unless the employee refuses to submit such a waiver. In such cases, evidence that the offer was made and refused, i.e., a certified letter, shall suffice.

An employee may waive his/her right to be considered for positions in an agency(ies); on a shift; in a particular work location(s) or to a particular position.

Section 9. Upward Mobility Program Policies

Policies of the Upward Mobility Program may be developed, implemented, changed and/or terminated by mutual agreement of the parties subject to Article XXXIV of this Agreement. All policies shall be consistent with this Article XV. UMP Policy Guidelines shall be posted on the UMP Link of the CMS Website.

Section 10. Work Commitment

All employees who target a credential title after July 1, 1994, and receive tuition toward a credential title must fulfill a work commitment of two (2) years in State service from the completion of the most recent course taken as part of a degree program. Any such employees who voluntarily leave State employment prior to fulfilling this commitment, will be responsible at the time of State separation to reimburse the State for tuition and fees paid toward the credential title.

For employees who targeted a credential title prior to July 1, 1994, and are currently working toward that title, the Upward Mobility Program may, upon appeal within each fiscal year and contingent upon available funding, pay full-time tuition and approved fees if the employees agree in writing to work two (2) years for the State of Illinois following the completion of their degrees or the most recent course taken as part of their degree programs. Any such employees who voluntarily leave State employment prior to fulfilling this commitment, will be responsible at the time of State separation for repaying the program any amounts paid above normal program benefits.

The amount of reimbursement will be prorated on a monthly basis relative to the extent the work commitment is fulfilled. An annual interest rate of 7% will be charged to the amount owed to the State of Illinois beginning 30 days after notification of repayment. The State of Illinois can withhold funds, including, but not limited to, retirement distribution and tax refunds, if payment is not made and will refer seriously past due accounts to a private collection agency.

The Upward Mobility Advisory Committee will determine if payback is required for employees who separate for such reasons as health, layoff, discharge and resignation no reinstatement rights.

Section 11. Retraining

Employees on layoff status can continue or begin participation in the Upward Mobility Program including being granted an appropriate certificate or credential; being placed on appropriate Upward Mobility Program eligibility list(s); and filling the relevant vacancy if they would otherwise be considered qualified and eligible.

Any eligible employee who does not respond to or accept a written notice to be recalled to the same or equal position classification he/she was laid off from, in a county he/she designated, shall not be allowed to continue participation in the Upward Mobility Program beyond the courses enrolled in at the time the recall notice is issued.

ARTICLE XVI
Demotions

Section 1. Definition and Procedure

Demotion is assignment of an employee to a vacant position in a position classification having a lower maximum permissible salary or rate than the class from which the demotion was made. It shall be implemented only for inability to perform the work of the classification.

An operating agency may initiate demotion of an employee by filing a written statement of reasons for demotion with the Director of Central Management Services in the form and manner prescribed. Such written statement shall be signed by the head of the

operating agency, and shall contain sufficient facts to show just cause for the demotion. No demotion shall become effective without the prior approval of the Director who shall take into consideration the employee's education, experience, length of service, and past performance.

Vacancies filled by master bargaining unit and/or CU-500 employees as a result of demotion shall not be considered permanent vacancies for the purpose of Article XIX or subject to the posting requirements of Article XIX, Section 2 from the time the employee receives official notice of his/her demotion until the effective date of same.

Section 2. Notification

If the statement of reasons for demotion of an employee is approved by the Director, a copy of the approved statement of reasons for demotion shall be served on the employee by the Director in person or by certified mail, return receipt requested, at the employee's last address appearing in the personnel file and the Union shall also be notified. The effective date shall be no earlier than two (2) weeks after the employee is notified.

Section 3. Employee Obligations

Upon the effective date, the employee shall report for duty to the position to which demoted and such report shall be without prejudice to grieve.

Section 4. Salary and Other Benefits of Employee

On the effective date of the demotion, the salary of such employee shall be adjusted to that step of the new classification pay schedule nearest to but less than his/her current rate of pay.

Section 5. Status of Demoted Employees

A demoted certified employee shall be certified in the position classification to which demoted, and shall not be required to serve a new probationary period; a demoted probationary employee shall serve a new probationary period in the position classification to which he/she is demoted.

ARTICLE XVII
Records and Forms

Section 1. Attendance Records

The Employer shall maintain accurate, daily attendance records.

An employee shall have the right to review his/her time and pay records on file with the Employer.

Section 2. Records

All public records of the Employer shall be available for inspection upon written request by the Union.

Section 3. Undated Forms

No supervisor or other person in a position of authority shall demand or request that an employee sign an undated resignation or any blank form. No employee shall be required to sign such a form. Any such demand shall entitle the employee to immediate appeal to the Director.

Section 4. Incomplete Forms

Any information placed on a form or any modification or alteration of existing information made on a form subsequent to it having been signed by an employee shall be null and void insofar as it may affect the employee, the employee's position or condition of employment. Any employee required to sign any form

prepared pursuant to this Agreement shall be given a copy of it at the time the employee's signature is affixed.

ARTICLE XVIII
Seniority

Section 1. Definition

Seniority for RC-6 and 9 shall, for the purposes stated in this Agreement, consist of the length of continuous service of an employee with their department in an AFSCME bargaining unit(s), except when a previously excluded position enters a bargaining unit pursuant to labor board procedures, seniority for an employee in that position shall consist of the employee's total length of service with their department. An employee who takes a position outside the bargaining unit and subsequently returns to the bargaining unit during the probationary period shall have his/her previous seniority date restored.

Seniority for RC-10, 14, 28, 42, 62 and 63 shall, for the purposes stated in this Agreement, consist of an employee's length of continuous service in an AFSCME bargaining unit(s), except when a previously excluded position enters a bargaining unit pursuant to labor board procedures, seniority for an employee in that position shall consist of the employee's total length of service, with all Agencies, Boards, or Commissions under the jurisdiction of the Governor since his/her most recent date of hire with the Employer, as defined herein. An employee who takes a position outside the bargaining unit and subsequently returns to the bargaining unit during the probationary period shall have his/her previous seniority date restored.

For layoff purposes only, if it becomes necessary to break the tie of two or more employees within an

agency in RC-10, 14, 28, 42, 62, or 63 such tie-breaking shall be by lottery. Specific procedures shall be negotiated in the Agency Supplementary Agreements. Procedures in RC-6 and 9, and other established practices, shall remain as set forth in the applicable Supplementary Agreements or as established by practice.

Section 2. Application

a) For employees in the RC-6, 9 and 10 bargaining units, in all applications for seniority under this Agreement the ability of the employee shall mean the qualifications and ability (including physical fitness) of an employee to perform the required work. Where ability and qualifications to perform the required work are, among the employees concerned, relatively equal, seniority as defined in Section 1 above shall govern.

b) For employees in the RC-14, 28(except for Site Technicians I and II), 62, and 63 bargaining units in cases of promotion, layoffs, transfers, shift and job assignments, seniority shall prevail unless a less senior employee has demonstrably superior skill and ability to perform the work required in the position classification. Non-merit factors unrelated to work performance shall not be considered.

c) For employees in the RC-42 bargaining unit and Site Technicians I and II, in cases of promotions, layoffs, transfers, and shift assignments, seniority shall prevail unless a less senior employee has demonstrably superior skill and ability to perform the work required in the position classification. Non-merit factors unrelated to work performance shall not be considered.

The Employer reserves the right to establish bona fide requirements of specialized skills, training,

experience and other necessary qualifications that have been set forth in the official position description (CMS-104) or listed as official options in the job specifications at the time of posting or layoff proposal.

Such requirements on the CMS-104 shall relate to permanent job functions of such a nature that could not be learned during the normal orientation period associated with the filling of a vacant position in that position classification.

The Employer agrees to notify the Union at the time of changing current specialized requirements or establishing specialized requirements, for informational purposes only.

The parties agree that positions in all RC-63 classifications and in certain classifications in RC-62 may be subject to the provisions of this Section. RC-62 classifications which the parties contemplate may include positions subject to these provisions are identified by a footnote in Schedule A.

The Employer shall notify the Union of any additional classification(s) it believes may include positions which should be subject to this Section and will negotiate over the necessity for such additional classification(s). Should the parties fail to agree, and the Employer implements the specialized requirements, the Union may grieve the dispute directly to Step 4.

Section 3. Termination

Seniority shall be terminated when an employee:

a) Voluntarily resigns, provided that he/she is not re-employed within four (4) calendar days;

b) Is discharged provided that should the Employer be later found to have acted inappropriately

and the employee is returned to his/her position, his/her seniority shall be reinstated;

c) Fails to report to work after layoff within five (5) days after he/she has been notified to report to work, unless the employee provides good cause for not so reporting. Such notification shall be sent to the employee's last address as recorded in the employee's official personnel file; and

d) Is laid off for a period of four (4) years.

Section 4. Re-Employment

Employees re-employed after termination of employment for any of the reasons in Section 3 shall be considered new probationary employees; except that this Section shall not affect such re-employed employee's right to prior State service credit for vacation entitlement, as provided in Article X, Section 3, or retirement rights, or sick leave rights as provided in Personnel Rule 303.105.

Section 5. Seniority of CETA Participants

Seniority and continuous service of CETA participants is effective back to the original date of hire. The parties recognize that the federal Comprehensive Employment and Training Act and regulations regarding maintenance-of-effort have the full force of law to the effect that in case of a layoff resulting from the termination of a CETA project or slots, CETA participants must be laid off prior to regular employees. Accordingly, seniority of CETA participants accrues for all purposes from the date of hire, except for the purpose of the layoff procedure. Upon transition into unsubsidized employment, full seniority is extended for that purpose as well.

Section 6. Certain Seniority Dates

Seniority dates for RC-14, 28, 62 and 63 employees who had, on July 22, 1977, a continuous service date for vacation purposes reflecting time prior to an interruption in service pursuant to Personnel Rule 303.250 and Article X, Section 1 of the 1977-79 contracts, shall be retained.

Section 7. Seniority of AFSCME Represented Employees Converted to State Employment

Employees converted to positions under the jurisdiction of this Agreement from an AFSCME represented bargaining unit not under the jurisdiction of this Agreement, shall be credited with seniority as if the employees had been state employees during their period of continuous employment prior to being converted.

ARTICLE XIX
Filling of Vacancies

Section 1. Definition of a Permanent Vacancy

For the purposes of this Article a permanent vacancy is created:

a) When the Employer determines to increase the work force and to fill the new position(s).

b) When any of the following personnel transactions take place and the Employer determines to replace the previous incumbent: terminations, transfers, promotions, demotions, and related transactions.

c) Vacancies filled by master bargaining unit and/or CU-500 employees as a result of demotion or voluntary reduction in lieu of layoff, pursuant to a layoff plan, shall not be considered permanent vacancies for the purpose of this Article or subject to

the posting requirements of Section 2 of this Article from the time the agency notifies the Union of layoff pursuant to Article XX,

Layoff, or the employee receives official notice of his/her demotion until the effective date of same.

A CU-500 employee who is subject to layoff shall only be offered a vacancy if there are no master bargaining unit employees subject to layoff who exercise their right to such position pursuant to Article XX.

The Union shall receive prior notification of employees who take a transfer or voluntary reduction to avoid layoff.

No vacancy shall be filled in this manner if there are employees on layoff or subject to layoff who have contractual rights to such position.

d) Vacant positions shall not be considered permanent vacancies for posting purposes in the Agency in which a layoff plan has been established from the time of establishment until the time the layoff plan has been implemented.

A non-AFSCME bargaining unit employee who is demoted or takes a voluntary reduction in lieu of layoff pursuant to the layoff plan, shall only be offered a vacant position if there are no master bargaining unit employees who choose to exercise their contractual rights to such position after a five (5) work day posting period.

Section 2. Posting

A. RC-6, 9, 14, and 28 (except Site Technicians I and II)

Permanent vacancies shall be posted for bid on the Employer's and other appropriate bulletin boards for a period of ten (10) working days. Once a vacancy is posted and employees have submitted bids for the position, the vacancy will not be posted again for a period of ninety (90) days unless all of the original bidders decline the position. If the employee does not possess the appropriate grade, he/she shall apply for the grade during the posting period. Posting in RC-6 and 9 shall be at the facility, and for RC-14 and 28 at all work locations of the agency in the county where the vacancy occurs for a period of ten (10) working days, except that in Cook County in agencies other than the Department of Employment Security, posting shall be by agency region or area, where applicable. The posting procedure may be modified if mutually agreed by the parties on an agency basis.

The Employer will also maintain all job openings in classifications which are listed in Schedule A, in the central list provided for under Article XV, Section 7.

Any bargaining unit employee may bid on a position; however, they must be deemed qualified and eligible in order to be considered for selection. An employee on leave of absence is not considered eligible unless, upon acceptance of the position, the employee is able to commence performing the duties within ten (10) working days of being offered the position. The bid notice shall state the position classification, the shift, days off (or rotating days off where such exist), the work location and assignment, and the rate of pay for such job. It is understood that the shift, work location or job assignment may be subject to change as a result of the exercise of shift or job assignment preference. The exercise of a shift or job assignment preference

does not necessitate reposting unless provided by current agency practice.

Permanent vacancies shall be filled by the application of the provisions of this Article and Article XVIII in the following order of priority:

a) Job Assignment and shift preference (Job Assignment not applicable in RC-6)

b) Recall or transfer on layoff

c) Intra- and Inter-Agency Transfer on Recall - An employee on a recall list shall have the right to transfer to a permanent vacancy in any bargaining unit in the same position classification or other position classification for which he/she is qualified in the employing agency and other agencies. The employee is responsible for applying for and/or identifying available vacancies by the close of the posting period for the position(s). Any successful bidder shall be removed from the recall list unless the position results in a loss of pay. It is understood by the parties that promotion is not an option under this provision.

d) Promotion and voluntary reduction

e) Transfer (except for RC-6 and 9 unless agency supplemental agreement permits)

B. RC-10, 62 and 63

Permanent vacancies shall be posted for bid on the Employer's and other appropriate bulletin boards for a period of ten (10) working days. Posting shall be at all work locations of the agency in the county where the vacancy occurs for a period of ten (10) working days, except that in Cook County in agencies other than the Department of Employment Security, posting shall be by agency, region or area, where applicable.

Once a vacancy is posted and employees have submitted bids for the position, the vacancy will not be posted again for a period of 90 days unless all of the original bidders decline the position. If the employee does not possess the appropriate grade, he/she shall apply for the grade during the posting period. The posting procedure may be modified if mutually agreed by the parties on an agency basis.

The Employer will also maintain all job openings in classifications which are listed in Schedule A, in the central list provided for under Article XV, Section 7.

Any bargaining unit employee may bid on a position; however, they must be deemed qualified and eligible in order to be considered for selection. An employee on leave of absence is not considered eligible unless, upon acceptance of the position, the employee is able to commence performing the duties within ten (10) working days of being offered the position. The Employer reserves the right to post by option and to require bona fide specialized skills, training, experience or other necessary qualifications as set forth in the officially approved CMS-104 or in the job specification. The bid notice shall state the position classification, any specialized skills, training, experience or necessary qualifications, the shift, days off (or rotating days off where such exist), the work location and assignment and the rate of pay for such job. It is understood that the shift, work location or job assignment may be subject to change as a result of the exercise of shift or job assignment preference. The exercise of a shift or job assignment preference does not necessitate reposting unless provided by current agency practice.

Such requirements on the CMS-104 shall relate to permanent job functions of a nature that could not be

learned during the normal orientation period associated with the filling of a vacant position in that position classification.

The parties agree that positions in all RC-10 and RC-63 classifications and in certain classifications in RC-62 may be subject to the provisions of this Section. RC-62 classifications which the parties contemplate may include positions subject to these provisions are identified by a footnote in Schedule A.

The Employer shall notify the Union of any additional classification(s) it believes may include positions which should be subject to this Section, and will negotiate over the necessity for such additional classification(s). Should the parties fail to agree, and the Employer implements the specialized requirements, the Union may grieve the dispute directly to Step 4.

Permanent vacancies shall be filled by the application of the provisions of this Article and Article XVIII in the following order of priority:

a) Job assignment and shift preference

b) Recall or transfer on layoff

c) Intra- and Inter-Agency Transfer on Recall - An employee on a recall list shall have the right to transfer to a permanent vacancy in any bargaining unit in the same position classification or other position classification for which he/she is qualified in the employing agency and other agencies. The employee is responsible for applying for and/or identifying available vacancies by the close of the posting period for the position(s). Any successful bidder shall be removed from the recall list unless the position results in a loss of pay. It is understood

by the parties that promotion is not an option under this provision.

d) Promotion, voluntary reduction and employees in parallel pay grades

e) Transfer

C. RC-42 and Site Technicians I and II

Intermittent titles are excluded from the posting process. Permanent vacancies shall be posted for bid on the Employer's and other appropriate bulletin boards for a period of ten (10) working days. Once a vacancy is posted and employees have submitted bids for the position, the vacancy will not be posted again for a period of 90 days unless all of the original bidders decline the position. If the employee does not possess the appropriate grade, he/she shall apply for the grade during the posting period. Posting shall be at all work locations of the agency in the county where the vacancy occurs. In the Department of Natural Resources it shall be by region for the title of those Site Technician II's assigned to the Regional Hot Shot Crews. Any bargaining unit employee may bid on a position; however, they must be deemed qualified and eligible in order to be considered for selection. An employee on leave of absence is not considered eligible unless, upon acceptance of the position, the employee is able to commence performing the duties within ten (10) working days of being offered the position. The bid notice shall state the position classification, the shift, days off (or rotating days off where such exist), the work location and the rate of pay for such job.

The Employer will also maintain all job openings in classifications which are listed in Schedule A, in the central list provided for under Article XV, Section 7.

Permanent vacancies shall be filled by the application of the provisions of this Article and Article XVIII in the following order of priority:

a) Shift preference at the work site (Prior to posting an employee may file a shift request form with the work site supervisor for the purpose of changing shifts in the event of a vacancy. Such request shall be granted pursuant to Article XVIII, and seniority permitting and the resulting vacancy shall be posted for bidding. Employees may not exercise their rights under this provision more than once every six months.)

b) Recall or transfer on layoff

c) Intra- and Inter-Agency Transfer on Recall - An employee on a recall list shall have the right to transfer to a permanent vacancy in any bargaining unit in the same position classification or other position classification for which he/she is qualified in the employing agency and other agencies. The employee is responsible for applying for and/or identifying available vacancies by the close of the posting period for the position(s). Any successful bidder shall be removed from the recall list unless the position results in a loss of pay. It is understood by the parties that promotion is not an option under this provision.

d) Promotion and voluntary reduction,

e) Transfer

D. All Units - Trainee Positions

The Employer shall first post the vacancy for the targeted title. If there are no qualified bidders, the Employer may place a trainee who has satisfactorily completed the training requirements in the targeted

position covered by a bargaining unit and such placement shall occur without further posting. Concurrent with the posting of a trainee position for informational purposes, the Employer will post the targeted position in accordance with Article XIX, Section 2. If there are no qualified bidders, the Employer may place a trainee who has satisfactorily completed the training requirements into the targeted position and such placement shall occur without further posting, if the targeted position has the same assignment, days off, and shift as originally posted. If not, the position shall be posted for job assignment purposes only.

E. Job Assignment/Recall

When vacancies are posted for job assignment and a recall list exists, such positions shall be posted for a period of five (5) working days.

F. Acceptance of Position

Any bidder who has been selected for a vacancy must make known his/her acceptance within two (2) working days of receiving notice of his/her selection and shall be placed in the position as soon as practicable. Failure to accept the position within said time limit shall constitute a waiver of the position.

G. Pre-Selection Background Checks and Drug Testing

The parties recognize that certain positions and/or agencies require pre-selection background checks, pre-employment fitness exams and/or drug test. Consistent with current practice employees who bid on such position and fail to pass a background check, pre¬employment fitness exam, and/or drug test shall be disqualified for selection. An Agency shall notify the Union prior to any change in classifications/positions

becoming subject to such requirement for bargaining unit employees.

Section 3. Job Assignment

A. RC-9 Only

1) When a job assignment vacancy is posted and more than one employee within the position classification requests such assignment, consideration shall be given to the employee with the most seniority in the same position classification as posted. If the successful bidder is in a higher semi-automatic in-series title than the semi-automatic in-series position posted, he/she shall retain the higher title.

2) When a new job assignment is created and more than one employee within the position classification requests such assignment, the most senior employee shall be given first consideration therefore.

3) When permanent changes in job assignments are made by the Employer at a facility, employees within the position classification affected by the change may exercise their seniority as defined in Article XVIII, Section 2, to remain at their current assignment.

4) In cases where a job assignment vacancy is filled by job assignment preference the vacancy created as a result of such selection thereafter shall be filled from the original bid list without further posting. If a senior employee turns down the original job assignment bid, his/her name will remain on the original bid list for selection to subsequent vacancies created by the filling of the original job assignment bid.

5) If the posted vacancy will not result in any employee changing job classification and is just a job assignment posting, the following shall apply:

a) Once the posted job assignment vacancy is filled from those employees in the same job classification who requested such, there shall be no further posting to fill the vacated assignment unless the filling of such would therefor result in an employee changing job classifications;

b) Notwithstanding the seniority provisions, the vacated assignment shall be filled by management from available employees in the same job classification except a request for such assignment by the highest seniority employee in the same classification making such request shall be honored by the management.

6) If the posted vacancy will eventually result in any employee changing job classifications (promotions, etc.), the following shall apply:

a) If the posted vacancy is filled by a request from an employee in the same job classification from another work assignment, there shall be no additional posting to fill the vacated assignment, unless otherwise agreed on an Agency basis.

b) Such vacated assignment shall be filled pursuant to Section 5 below from those employees not in the posted classification who bid on the original vacancy.

7) This Section does not apply to any other bargaining unit except as past practice may provide otherwise.

B. RC-10, 14, 28, 62, and 63

1) When a permanent vacancy is posted and more than one (1) employee within the position classification and work location where the vacancy occurs bids the assignment, the most senior employee who bids the assignment shall be assigned the job. Those employees bidding for a position in a lower classification who are in a semi-automatic series, shall retain his/her current position classification unless additional training is required. If additional training is required, the employee shall serve a training period not to exceed four(4) months. Upon successful completion of the training, and a satisfactory performance evaluation, the employee shall return to his/her former title and pay. In cases where a job assignment vacancy is filled by job assignment preference the vacancy created as a result of such selection thereafter shall be filled from the original bid list without further posting. If a senior employee turns down the original job assignment bid, his/her name will remain on the original bid list for selection to subsequent vacancies created by the filling of the original job assignment bid.

(RC-10 Only) Job assignment vacancies shall be defined within an Agency (such as but not limited to, Regulatory or Enforcement within the Air, Land, Water, or Public Water in EPA; and Benefits, Administrative, and Board of Review in IDES).

2) When permanent changes in job assignments are made by the Employer, employees within the classification affected may exercise their seniority to retain their current assignment. These transactions do not necessitate the posting procedures of Section 2 above.

3) Where the introduction of substantially different technology or equipment to the work place would result in the significant alteration of duties for current employees, the assignments so created shall be posted and filled by seniority as under subsection (1) above.

C. Any employee who successfully exercises rights under Section 3, "Job Assignment", shall be prohibited from again exercising those rights for a period of twelve (12) months (RC-10 for a period of twenty-four (24) months) unless the employee is subsequently displaced from the assignment for which he or she bid.

D. This Section shall not apply to employees who bid while on original and promotional probationary periods.

E. Employees shall be allowed to bid for posted vacancies that carry different days off subject to the procedures set forth in this Section. Such bids shall be considered with other job assignment bids.

F. A successful job assignment bidder shall be returned to his/her former position (seniority permitting) anytime during the first four (4) months of the job assignment due to the inability to perform duties and responsibilities of the new position. In addition, an employee may voluntarily return to his/her former position (seniority permitting), during the first four (4) months in the job assignment if such is to a permanent vacancy.

G. When a position is vacated by an employee being returned due to the inability to perform the duties and responsibilities of the new position or who chooses to return to his/her previous position within the four (4) month time frame, the position that was

vacated, if filled, shall be filled from the original bid list within ninety (90) days without further posting.

Section 4. Shift Preference

A. RC-14, 28, 62 and 63

1) When permanent changes in shift assignments are made, employees shall be entitled to exercise seniority to retain their shift assignments. A permanent change in an employee's shift assignment shall be made effective on the first day of the employee's new work week.

2) Within a period of one (1) calendar month each year, which shall be determined at agency/facility supplemental negotiations, employees within a work location shall have an opportunity to exercise seniority for shift assignments within each work location. An employee shall be eligible to exercise seniority pursuant to this section for any starting or quitting time that is different from the employee's current work schedule provided such schedule is set forth in the appropriate supplemental agreement.

B. RC-6 and 9

1) Absent any emergency operating needs of the Employer, a permanent change in an employee's normal shift assignment shall commence the first day of the employee's work week.

2) When permanent changes in shift assignments are made, employees within a position classification at a facility shall be entitled to exercise seniority as defined in this Article to retain their current shift assignment.

3) During each contract year, no more than 20% of the employees within a bargaining unit position classification at a facility shall be permitted to

exercise seniority as defined in Article XVIII to displace in the shift of his/her choice the least senior employee within such position classification and shift so long as such choice is exercised within the employee's normal area of assignment (by ward, program or physical area, as the case may be). No employee shall be permitted to exercise his/her choice hereunder more than once during each contract year. An employee shall be eligible to exercise seniority pursuant to this section for any starting or quitting time that is different from the employee's current work schedule provided such schedule is set forth in the appropriate supplemental agreement.

This subsection may be modified by the parties at local supplemental negotiations to allow local flexibility with shift preference and related bumping.

4) Seniority as used herein shall be defined in Section 2 of Article XVIII but the term "ability" and "qualifications" shall also include the employee's demonstrated compatibility with residents as determined by the Employer.

5) "Shift Bumping" request procedure:

a) Requests shall be made in writing to the immediate supervisor at least fifteen (15) days in advance of the time the employee requests such shift change to take place.

b) The employee being displaced by such request shall be given the notice of such displacement and the shift assigned as soon as possible, but no later than ten (10) working days prior to such change.

c) The change or exchange of shifts shall take place starting with the first day of the bumped employee's work week. Such change may cause the displacing employee's requested date of change to be delayed but no later than seven (7) days after the effective date of change requested.

d) A displaced employee may exercise his/her seniority to displace a junior employee on a shift of his/her preference and such employee may give fifteen (15) days notice under subsection (a) above any time after he/she receives notice of the original displacement. Such employee's shift change shall not be deemed or counted as the one choice allowed an employee during each contract year nor be charged against the 20% limit for all employees, if such request is made within forty-five (45) days of being notified under (b) above.

e) Management shall notify the Union of all shift displacements prior to the actual displacement taking place.

C. RC-42 Shift Bumping

When permanent changes in shift assignments are made, employees shall be entitled to exercise seniority to retain their shift assignments or to displace the least senior employee on a shift of his/her choice, seniority permitting, within such position classification so long as such choice is exercised within the employee's normal area of assignment. A permanent change in an employee's shift assignment shall be made effective on the first day of the employee's new work week. An employee shall be eligible to exercise seniority pursuant to this section for any starting or quitting time that is different from the employee's

current work schedule provided such schedule is set forth in the appropriate supplemental agreement.

On February 15 each year, employees within a work location shall have an opportunity to exercise seniority for shift assignments within each work location.

Section 5. Promotion, Voluntary Reduction and Parallel Pay Grade Movement

A. RC-6, 9, 10, 14, 28, 62, and 63

Subject to filling permanent vacancies under Section 3 of this Article, such vacancies shall be filled in accordance with the following:

1) The Employer, if requested, shall supply the employee with Form CMS-1OOB. Employees shall be allowed a reasonable period of time to complete the form without loss of pay during normal work hours. The employee must return the form to the Examining Division, Department of Central Management Services, within the prescribed posting time limits.

2) Management will request whatever promotional lists are necessary to show the grades for all bidders from the work location. No selection will be made until the grades of all bidders have been received by management from the Department of Central Management Services. If the employee does not possess the appropriate grade, he/she shall apply for the grade during the posting period. Failure to submit a CMS-100B within the posting period shall result in the bidder being deemed ineligible.

3) For RC-10, 14, 28, 62 and 63 only. Employees bidding for vacancies under this Section from position classifications having parallel pay grades

shall be required to qualify under the same standards used for promotional bidders.

4) Order of Selection. Selection for promotion and/or voluntary reduction shall be in the following order of priority from among employees certified in their current position classification, for each respective bargaining unit listed in Schedule A.

a) RC-6 and 9

(i) The employee with the most seniority in the next lower rated position classification within the position classification series in which the vacancy occurs.

(ii) The employee with the most seniority in a higher position classification in the position classification series.

(iii) The employee with the most seniority in a lower position classification (in the same classification series) other than the next lowest in the position series.

(iv) The employee with the most seniority in an equal to, lower, or higher position classification not in the same position classification series.

b) RC-10, 14, 28, 62 and 63

(i) Employees in the next lower classification within the classification series, and employees bidding for voluntary reduction,(RC-10 only and full-time employees in the same classifications bidding on an intermittent position) who have completed their promotional probationary period.

(ii) Employees in the next succeeding lower classification within the classification series.

(iii) All other qualified and eligible bidders (including parallel pay grade bidders).

Work location priorities for the above are as follows:

(i) Employees at the work location where the vacancy occurs;

(ii) Other work locations of the agency within the county unless mutually agreed otherwise on an agency basis.

(iii) In the Department of Natural Resources it shall be within region for those Site Technician II's assigned to the Regional Hot Shot Crews.

5) Selection from the B grade list shall take place only after there are no A bidders, or after the A's on the competitive promotional register are exhausted. The register shall be considered exhausted when there are not more than two A's on it who have not indicated that they waive rights with respect to the position in question. Selection from those employees not receiving an A or B shall take place only after the A and B eligible registers are exhausted and/or there are no A or B bidders. Employees on the A or B list who have been contacted by the Employer shall be considered to have waived if they have not responded within five (5) days to a request for waiver.

6) For the purposes of this Section, the employee selected to fill such permanent vacancy shall be selected from eligible and qualified bidders on the basis of seniority as defined in Article XVIII. However, a bidder with less than one (1) year service in the Agency in which the vacancy arises shall not

be awarded the position unless there are no eligible and qualified bidders with more than one (1) year's service with the Agency. Employees shall not be asked or required to resign from their current position in order to be selected for any other position in any other AFSCME bargaining unit regardless of agency.

7) A certified employee selected through voluntary reduction shall be certified in that position classification without serving a probationary period. A probationary employee who voluntarily reduces shall serve a new probationary period.

8) A promoted employee or an employee selected from a parallel pay grade shall be returned to his/her former position classification (seniority permitting) any time during the certification period, which shall consist of four (4) months which may be by mutual agreement extended to six (6) months of continuous service except for employees promoted under a Trainee Agreement who shall serve the probationary period defined in the applicable Trainee Agreement, after such promotion or selection due to the inability to perform duties and responsibilities of the newly promoted position classification. In addition, an employee may voluntarily return to such position classification at his/her former step and creditable service date, seniority permitting, during the certification period, which shall consist of four (4) months which may be by mutual agreement extended to six (6) months, if such return is to a permanent vacancy. Such movement supersedes all priorities listed in Section 2 of this Article. An employee who promotes or is selected from a parallel pay grade into a position classification in which he/she was previously certi-

fied shall be considered certified without serving a new certification period provided that the duties and responsibilities of the classification remain essentially unchanged. Employees promoting to a position not covered under this Agreement shall not be allowed to return to his/her previous position during the promotional probationary period, unless the Union signs a waiver allowing for the return.

9) If there are no qualified bidders (or transfer applicants under RC-10,14, 28, 62 and 63) the Employer may at its prerogative fill the vacancy from voluntary non-bidders or by hiring new employees provided there are no employees in a higher position classification on the appropriate recall lists.

10) Nothing contained in this Article shall prevent the Employer from temporarily filling a posted vacancy.

B. RC-42 Only

1) The Employer, if requested, shall supply the employee with Form CMS-1OOB. Employees shall be allowed a reasonable period of time to complete the form without loss of pay during normal work hours. The employee must return the form to the Examining Division, Department of Central Management Services within the prescribed posting time limits.

2) Management will request whatever promotional lists are necessary to show the grades for all bidders from the work location. No selection will be made until the grades of all bidders have been received by management from the Department of Central Management Services. If the employee does not possess the appropriate grade, he/she

shall apply for the grade during the posting period. Failure to submit a CMS-100B within the posting period shall result in the bidder being deemed ineligible.

3) Order of Selection. Selection for promotion shall be in the following order of priority from among employees certified in the position classification series listed in Schedule A.

a) Employees in the next lower classification within the classification series, and employees bidding for voluntary reduction.

b) Employees in the next succeeding lower classification within the classification series.

c) All other qualified and eligible bidders.

Work location priorities for the above are as follows:

(i) Employees at the work site,

(ii) Other work locations of the agency within the county.

4) Selection from the B grade list shall take place only after there are no A bidders, or after the A's on the competitive promotional register are exhausted. The register shall be considered exhausted when there are not more than two A's on it who have not indicated that they waive rights with respect to the position in question. Selection from those employees not receiving an A or B shall take place only after the A and B eligible bidders are exhausted and/or there are no A or B bidders. Employees on the A or B list who have been contacted by the Employer shall be considered to have waived if they have not responded within five days to a request for waiver.

5) For the purposes of this Section, the employee selected to fill such permanent vacancy shall be selected from eligible and qualified bidders on the basis of seniority as defined in Article XVIII. Employees shall not be asked or required to resign from their current position in order to be selected for any other position in any other AFSCME bargaining unit regardless of agency.

6) A certified employee selected for voluntary reduction shall be certified in that position classification without serving a probationary period. A probationary employee who voluntarily reduces shall be certified by serving the balance of the probationary period.

7) A promoted employee shall be returned to his/her former position classification (seniority permitting) any time during the certification period, which shall consist of four (4) months which may be by mutual agreement extended to six (6) months, after such promotion due to the inability to perform duties and responsibilities of the newly promoted position classification. In addition, an employee may voluntarily return to such position classification at his/her former step and creditable service date, seniority permitting and excluding those selecting non-AFSCME represented positions, unless the Union signs a waiver allowing for the return, the certification period which shall consist of four (4) months which may be by mutual agreement extended to six (6) months after such promotion, if such return is to a permanent vacancy. Such movement supersedes all priorities listed in Section 2 of this Article. An employee who promotes or is selected from a parallel pay grade into a position classification in which he/she was previously

certified shall be considered certified without serving a new certification period provided that the duties and responsibilities of the classification remain essentially unchanged. Employees promoting to a position not covered under this Agreement shall not be allowed to return to his/her previous position during the promotional probationary period, unless the Union signs a waiver allowing for the return.

8) If there are no qualified bidders or transfer applicants the Employer may at its prerogative fill the vacancy from voluntary non-bidders or by hiring new employees provided there are no employees in a higher position classification on the appropriate recall list.

9) Nothing contained in this Article shall prevent the Employer from temporarily filling a posted vacancy.

C) The order of selection is subject to the provisions of Article XV, Upward Mobility Program.

D. When a position is vacated by an employee choosing to voluntarily return to his/her previous classification within the four (4) month time frame, the position that was vacated, if filled, shall be filled from the original bid list within ninety (90) days without further posting.

Section 6. Days Off

A. RC-6 Only

Employees within the same general work assignment (cellhouse duty, tower duty, cottage duty, etc.), same position classification and same shift may exercise their seniority as defined in Article XVIII, Section 2 to retain their current scheduled days off.

Scheduled days off shall be assigned by seniority from among employees within the same general work assignment, same position classification and same shift, the most senior employee choosing first. No employee shall be permitted to exercise his/her choice hereunder more than once during each contract year.

Requests shall be made in writing to the immediate supervisor at least fifteen (15) days in advance of the time the employee requests a days off change.

The employee being displaced by such request shall be given the notice of such displacement and the days off change as soon as possible, but not later than ten (10) working days prior to such change.

The change of days off shall take place starting with the first day of the bumped employee's work week. Such change may cause the displacing employee's requested date of change to be delayed but no later than seven (7) days after the effective date of change requested.

A displaced employee may exercise his/her seniority to displace a junior employee for days off and such employee may give fifteen (15) days notice under subsection (a) above any time after he/she receives notice of the original displacement. Such employee's day off change shall not be deemed or counted as the employee's one choice allowed during the contract year.

B. RC-42, 28, 62, 63 and Site Technicians I and II

When the Employer makes permanent work schedule changes affecting employees days off, employees within the same general work assignment, same position classification, and same shift may exercise their seniority to retain their current scheduled days

off or for RC-42 and Site Technicians I and II only, to displace the least senior employee on a shift different days off schedule of his/her choice, seniority permitting, within such position classification so long as such choice is exercised within the employee's normal area of assignment. Within 90 days of the effective date of this Agreement, and March 15 in the subsequent year thereafter, employees may exercise their seniority for scheduled days off from among employees within the same general work assignment, same position classification and same shift, the more senior employee choosing first.

Section 7. Transfers

A. RC-6, 9, 10, 14, 28, 62 and 63

An employee, except employees desiring to transfer who have not completed their original six (6) month probationary period, and for those Technical Advisor positions appointed by a Commissioner of the Illinois Workers' Compensation Commission, desiring to transfer to the same position classification, an equal or lower position in a classification in which an employee was previously certified, or a position lower in the series for which he/she is qualified, in a different work location shall file a request for transfer form, which shall be effective for two (2) years, with the appropriate personnel officer. A request for transfer form will be removed if the employee waives a job offer and would need to be resubmitted for future vacancies. In addition, an employee seeking a transfer to a clerical position must be previously certified in the identified option or have passed the testing option within ten (10) working days of the Employer giving his/her notice of transfer consideration, unless the test is not reasonably available to the employee within such time frame. Employees may not transfer under

this Section more than once every twenty-four (24) months. An employee transferring from one unit/work area of an Agency to another unit/work area shall be transferred in a timely manner. Those employees requesting and receiving a transfer for a position in a lower classification within their semi-automatic series shall retain his/her current position classification, unless additional training is required.

(Except RC-6) A transferred employee shall be returned to his/her former position (seniority permitting) any time during the first four (4) months of continuous service, after such transfer due to the inability to perform duties and responsibilities of the newly transferred position. In addition, an employee may voluntarily return to such position at his/her former work location, seniority permitting, during the first four (4) months of continuous service after the transfer if such return is to a permanent vacancy. Such movement supersedes all priorities listed in Section 2 of this Article.

(Except for RC-6 and 9) When a vacancy is not filled by the exercise of, or the failure to exercise, the rights in Sections 3, 4 and 5 above and in Article XX (Layoff), Sections 3 and 4, it shall be filled on the basis of seniority as defined in Article XVIII from among employees who have completed a request for transfer form, in the following order:

a) Applicants to transfer to a different work location of the same Agency in the same county;

b) Applicants to transfer to a different work location of the same Agency in a different county;

c) Applicants to transfer to a different Agency.

B. RC-42 Only

An employee desiring to transfer to the same position classification in a different work site shall file a request for transfer form which shall be effective for one year with the appropriate Personnel Officer. Employees may not transfer under this Section more than once every twelve (12) months. When a vacancy is not filled pursuant to Section 4, it shall be filled on the basis of seniority as defined in Article XVIII from among employees who have completed a request for transfer form, in the following order:

(i) Applicants to transfer to a different work site of the same agency in the same county;

(ii) Applicants to transfer to a different work site of the same agency in a different county;

(iii) Applicants to transfer to a different Agency.

A transferred employee shall be returned to his/her former position (seniority permitting) any time during the first four (4) months of continuous service, after such transfer due to the inability to perform duties and responsibilities of the newly transferred position. In addition, an employee may voluntarily return to such position at his/her former work location, seniority permitting, during the first four (4) months of continuous service after the transfer if such return is to a permanent vacancy. Such movement supersedes all priorities listed in Section 2 of this Article.

When a vacancy is filled under this Section, management is not required to post the resulting vacancy. However, if it does not post the job, it shall thereupon honor any transfer requests then on file with the Agency to the extent possible, and they may fill the resulting vacancy pursuant to Section 5B(8).

C) When a position is vacated by an employee choosing to voluntarily return to his/her previous position within the four (4) month time frame, the position that was vacated, if filled, shall be filled from the original bid list within ninety (90) days without further posting.

Section 8. Promotion and Conversion of Intermittents

Where a vacancy arises in a work location in a classification for which there exists a parallel intermittent classification, intermittents who bid shall be grouped with bidders from the next lower-rated classification. Intermittent Program Representatives and Intermittent Service Representatives, shall be considered equal in status for filling vacancies for full time Program Representative and Service Representative Positions. In the event that an intermittent is awarded the position, he/she shall be considered converted in status. In the event that two (2) IDES Intermittent Program Representatives at the work location have been utilized for 1500 hours or more for three consecutive federal fiscal years, a full time Program Representative position shall be posted and filled at that work location. Intermittent laborers who are not certified shall be allowed to bid and will be interviewed for positions prior to hiring from the outside for full-time vacancies.

Section 9. Semi-Automatic In-Series Advancement

For the purposes of this Article, jobs currently being filled through semi-automatic "in-series advancement" shall not be considered as permanent vacancies. Upon eligibility, employees shall be promoted and semi-automatically advanced once they have received a satisfactory annual evaluation and a promotional "A" or "B" grade from the Department of Central

Management Services. The effective date of such promotion shall be no later than the date the employee completed the required time period for such advancement, provided the annual evaluation is at least satisfactory and the employee has received a promotional "A" or "B" grade. Failure to issue a grade within fifteen (15) days after the employee timely submits all required documentation shall not affect the effective date of the semi-automatic promotion.

With respect to the Mental Health Generalist series, it is understood that the Department of Mental Health and Developmental Disabilities will continue its past practice of not promoting the selected bidder until the successful completion of training, and its practice regarding promotion of Technicians I to Technicians II under the Memorandum of Understanding.

Semi-automatic titles include, but are not limited to the following:

Agricultural Land and Water Resources Specialist I to II, II to III

Bank Examiner I to II, II to III

Chemist I to II

Child Protection Associate Specialist to Child Protection Specialist

Child Protection Specialist to Child Protection Advanced Specialist

Child Welfare Associate Specialist to Child Welfare Specialist

Child Welfare Specialist to Child Welfare Advanced Specialist

Correctional Counselor I to II

Corrections Food Service Supervisor I to II

Corrections Leisure Activities Specialist I to II

Corrections Parole Agent to Corrections Senior Parole Agent

Corrections Supply Supervisor I to II

Criminal Intelligence Analyst I to II

Day Care Licensing Representative I to II

Environmental Health Specialist I to II

Environmental Protection Engineer I to II, II to III

Environmental Protection Geologist I to II, II to III

Environmental Protection Specialist I to II, II to III

Financial Institutions Examiner I to II, II to III

Forensic Scientist I to II, II to III

Gaming Special Agent Trainee to Gaming Special Agent

Gaming Special Agent to Gaming Senior Special Agent

Geographic Information Specialist I to II

Information Service Specialist I to II

Human Services Grant Coordinator I to II

Licensed Practical Nurse I to II

Manpower Planner I to II

Office Aide to Office Clerk

Rehabilitation Counselor Trainee to Rehabilitation Counselor to Rehabilitation Counselor Senior

Rehabilitation Case Coordinator I to II

Revenue Auditor I to Revenue Auditor II

Revenue Auditor II to Revenue Auditor III

Revenue Collection Officer Trainee to Revenue Collection Officer I, I to II, II to III

Revenue Special Agent Trainee to Revenue Special Agent

Revenue Special Agent to Revenue Senior Special Agent

Revenue Tax Specialist I to II

Site Technician I to Site Technician II

Social Service Program Planner I to II, II to III

Technical Advisor I to II (with law license)

Terrorism Research Specialist I to II

Weatherization Specialist I to II

Section 10. Agency Bidders Preference
RC-42 and Site Technicians I and II

An employee with one year or more service with the agency shall be granted preference in the application of seniority in this Article over employees having less than one year service in the agency.

ARTICLE XX
Layoff

Section 1. Application

Layoff shall be in accordance with the procedures set forth in this Article with the exception that they shall not apply to:

a) Emergency shutdown of five (5) days or less where all employees are to be recalled. Time in non-work status as a result of emergency shut down pursuant to 80 Ill. Admin. Code § 303.310 shall be with pay. The parties agree to establish a committee that

will be charged with discussing which employee's duties are critical to the continuity of essential state services. Such committee shall meet no later than November 1, 2013 unless mutually agreed otherwise.

b) The nonscheduling of intermittent employees.

c) School year employees at institutions and schools during recesses in the academic year and/or summer, if all employees in the affected classes are to be laid off and recalled.

d) Temporary layoff of five (5) days or less shall be in accordance with Personnel Rule 302.510 and seniority as defined in Article XVIII. Employees affected by temporary layoff shall not suffer any reduction in fringe benefits for the term of the temporary layoff and employees shall be laid off in accordance with Section 2(a), (c), (d), (e) and shall receive notice in accordance with Section 3(l).

Temporary layoff provisions contained herein shall not be used for implementing a statewide furlough program which would affect all State agencies without the Employer first notifying and negotiating with the Union over such intent.

Section 2. General Procedures

a) Layoff shall be by official organizational unit as recorded by official position description coding methods. The bargaining units are regarded as distinct and separate units for purposes of layoff unless specific provisions of this master contract and/or this Article allow for specific exceptions such as bumping between related classifications in different bargaining units. The organization units for RC-6 and 9 shall be defined as the facility.

b) It is understood by the parties that Personnel Rule 302.523 dealing with voluntary layoff shall apply to all classifications and titles listed in Schedule A of the Master Collective Bargaining Agreement.

c) Layoff shall be by position classification.

d) Employees within the appropriate layoff unit as defined in (a) above shall be laid off in inverse order of seniority as defined in Article XVIII.

e) No certified or probationary employee within a position classification within an appropriate organizational unit and work location shall be laid off until any temporary, provisional or emergency employee, and the Personal Service and Vendor Contract worker who performs substantially similar duties to the position classification of the employee who otherwise would be laid off are terminated noncertified. No certified or probationary employee within a position classification within an appropriate organizational unit shall be laid off until an employee in a trainee position classification within the classification series or an employee in a trainee position classification who has a targeted title to a position within the classification series within either the appropriate organizational unit or worksite is first terminated noncertified. No certified employee within a position classification within an appropriate organizational unit shall be laid off until all original appointment, probationary employees within the same position classification within the appropriate organizational unit are first laid off. Notwithstanding the above, if there is no employee subject to layoff who is qualified and wishes to perform the work of a Personal Service and Vendor Contract worker who performs substantially similar duties to the position classification, such Personal Service and Vendor Contract worker need not be terminated.

f) (RC-10, 62, 63 only) In the application of the layoff and recall procedure, the Employer reserves the right to establish bona fide requirements of specialized skills, training, experience and other necessary qualifications that have been set forth in the official position description (CMS-104) or listed as official options in the job specification at the time of the layoff proposal. The Employer agrees to notify the Union of specialized requirements of positions involved in the application of the layoff procedure at the time of submitting the agency's layoff proposal to the Director of Central Management Services for informational purposes only.

Such requirements on the CMS-104 shall relate to permanent job functions of such a nature that could not be learned during the normal orientation period associated with the filling of a vacant position in that position classification.

The parties agree that positions in all RC-10 and RC-63 classifications and in certain classifications in RC-62 may be subject to the provisions of this Section. RC-62 classifications which the parties contemplate may include positions subject to these provisions are identified by a footnote in Schedule A.

The Employer shall notify the Union of any additional classification(s) it believes may include positions which should be subject to this Section, and will negotiate over the necessity for such additional classification(s). Should the parties fail to agree, and the Employer implements the specialized requirements, the Union may grieve the dispute directly to Step 4.

g) (RC-9 only) For Licensed Practical Nurse and Mental Health Technician positions which require the

use of sign language, the Employer may require sign language as a bona fide option as listed in the job description.

Section 3. Bumping and Transfer in Lieu of Layoff

a) An employee who is subject to layoff is defined as that employee who is scheduled to be laid off by the employing Agency or removed from their position, even though they still may be on the Agency's payroll.

b) No less than five (5) calendar days prior to the layoff meeting, the Employer will provide a written packet of information informing an employee(s) subject to layoff and employee(s) potentially affected by layoff of his/her highest level rights under each step (c) through (j). Such packet shall include: the agency seniority roster (including shift, days off, work location, work site and specialized skills) of employee(s) subject to layoff and employee(s) potentially affected by layoff; the agency vacancy list (including shift, days off, work location, work site and specialized skills), if applicable; potential bumping options, if applicable; and such information as is needed in order for the employee(s) to exercise his/her rights under this Article.

Starting with the highest bargaining unit and pay grade, employee(s) may choose to exercise or waive his/her available bump option in (c) through (i), if applicable. The employee(s) must make his/her selection known to the Employer at the time of his/her bump meeting and such selection shall be final. An employee may still opt to be laid off at any time prior to the implementation of the bump, however the Employer shall not be required to modify the layoff plan.

Agency vacancies shall be offered, if applicable and seniority permitting, upon completion of the bumping

process, (c) through (i). An employee(s) who chooses to waive his/her available bump option, or if no bump option was available, may choose to exercise his/her right to a Transfer or Voluntary Reduction in Lieu of Layoff (j), if applicable and seniority permitting. The employee must make his/her selection known to the Employer at the time he/she is offered a vacancy and such selection shall be final. An employee may still opt to be laid off at any time prior to being placed into the vacancy, however the Employer shall not be required to modify the layoff plan.

c) Bumping Priority – First Step – Work location for bumping purposes is defined as the identified agency's facility, local office area or building or as defined by supplemental agreement approved by DCMS and AFSCME in which the organizational unit of layoff is located except as provided for in RC-6 and RC-9 in Section 2(a) of this Article. An employee subject to layoff shall bump the least senior employee in the same position classification and work location, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform. In the event that more than one employee in the same position classification and work location are subject to layoff, an equal number of least senior employees at the work location (a number equal to the number of employees electing to bump) shall be identified and in seniority order, the employees subject to layoff shall be allowed their choice in bumping the identified least senior employees. Since the work location is facility wide, RC-6 and RC-9 employees are not subject to this lateral bumping provision. Management reserves the right to resolve staffing deficiencies resulting from an RC-9 layoff per Article XIX, Section 3(A)3 or 3(A)l as agreed by the

parties. In the event that an employee waives or refuses to accept an available bump under this provision the employee shall be laid-off.

d) Bumping Priority – Second Step – If the employee is unable to bump at the immediate work location as defined in (c) above, the employee shall bump the least senior employee in the same position classification, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, and agency in the county where the position is located unless otherwise agreed by the parties in supplemental agreements approved by DCMS and AFSCME. In the event that more than one employee in the same position classification and work location are unable to bump under (c) above, an equal number of least senior employees in the county (a number equal to the number electing to bump) shall be identified and in seniority order, the employees subject to layoff shall be allowed their choice in bumping the identified least senior employees. RC-6 and RC-9 employees are not subject to this lateral bumping provision. In the event that an employee waives or refuses to accept an available bump under this provision, the employee shall be laid off.

e) Bumping Priority – Third Step – Lower level in same position classification series, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, by work location (similar to (c) above) but includes RC-6 and RC-9 employees.

f) Bumping Priority – Fourth Step – Lower level in same position classification series, except in

position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, by county (similar to (d) above) but excludes RC-6 and RC-9 employees.

g) Bumping Priority – Fifth Step – Employees covered by the Collective Bargaining Agreement shall be allowed to bump into a previously certified position classification or the successor title to a previously certified classification, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in any AFSCME bargaining unit, or lower level position classification in the same classification series except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in another AFSCME bargaining unit by work location (similar to (c) above) but includes RC-6 and RC-9 employees.

h) Bumping Priority – Sixth Step – Employees covered by this Collective Bargaining Agreement shall be allowed to bump into a previously certified position classification, or successor title to a previously certified position classification, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in any AFSCME bargaining unit or lower level position classification in the same classification series, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in another AFSCME bargaining unit by

county (similar to (d) above) but excludes RC-6 and RC-9 employees.

i) Notwithstanding the above, an employee subject to layoff shall be permitted to exercise bumping options at his/her worksite and/or work location, seniority permitting, before bumping to another worksite or work location.

j) Transfer or Voluntary Reduction in Lieu of Layoff - An employee subject to layoff as defined above shall be offered a transfer or voluntary reduction within the agency's available bargaining unit vacancies in lieu of layoff, and provided the employee is qualified for such vacancy. Offers of transfers or voluntary reduction shall be by seniority. The employing agency's vacancies as defined under Article XIX shall be offered on a statewide basis regardless of the work location or bargaining unit of the vacancy.

k) Inter-agency Transfer on Layoff – An employee(s) unable to exercise his/her bumping and seniority rights under the above Sections, or for whom the exercise of such rights would result in a two (2) or more paygrade reduction, or would require the employee(s) to travel in excess of thirty-five (35) miles (or twenty (20) miles within Cook County) from his/her current work location, shall have the right to transfer to a permanent vacancy in any AFSCME bargaining unit in the same position classification or other position classification for which he/she is qualified in another agency.

l) The Union and employees shall be provided thirty (30) days advance notice of the layoff by the agency whenever possible and in emergency layoff situations the Union shall be provided as much advance notice as possible. Such notice to the Union

shall contain the details of layoff with respect to numbers, position classification, and work location.

m) Employees reduced in pay grade by virtue of bumping or voluntary reduction to avoid layoff shall retain recall rights to his/her former position classification.

n) It is understood by the parties that promotion in lieu of layoff is not an employee option as stated under this Article.

o) An employee in a position classification in a semi-automatic series who exercises a bumping right under this Section to the lower level title in the semi-automatic series shall retain his/her current classification.

p) All bumping rights and rights to vacancies shall extend to previously certified classifications for which he/she is qualified, including classifications which are successor titles and those in the same series but lower than the previously held title, regardless of bargaining unit.

q) All bumping rights under this Section shall not be exercised between agencies.

Section 4. Recall

a)(1) RC-6 and 9. When staffing is increased or permanent vacancies occur within a position classification or in a position classification lower in the series for titles that are listed under Article XIX, Section 9, employees laid off from such position classification, at the facility shall be recalled in accordance with seniority as defined in Article XVIII, Section l; provided, however, when two or more facilities are within the same county, the recall list will be constituted by county and, thus, laid off

employees from such facilities shall be recalled at any facility within said county in accordance with seniority as defined in Article XVIII, Section 1.

(2) RC-10, 14, 28, 42, 62 and 63. When staffing is increased or permanent vacancies occur within the position classification or in a position classification lower in the series for titles that are listed under Article XIX, Section 9, affected employees in the employing unit shall be recalled in accordance with seniority as defined in Article XVIII, Section 1, provided, however, when two or more employing units are within the same county, the recall list will be constituted by county. For RC-10, 62 and 63, employees must be qualified to meet the specialized skill(s) of a position in order to be recalled to the position.

(3) All employees subject to layoff or on layoff may select up to two (2) counties in addition to the county from which they have been laid off on whose recall list they wish their name to appear, and shall be so listed. Such county preference must be made known to the Employer anytime prior to the effective date of the layoff. However if a facility or office is closed, such employees will be allowed to select up to three (3) counties in addition to the county from which they were laid off.

Effective July 1, 2013, all employees subject to layoff or on layoff may select up to three (3) counties on whose recall list they wish their name to appear, and shall be so listed. Such county preference must be made known to the Employer anytime prior to the effective date of the layoff or prior to July 1, 2013, whichever comes later. However, if a facility or office is closed, such employees will be allowed to select up to four (4) counties.

If an employee elects a lateral move, or is recalled to another county other than his/her county of layoff, he/she shall retain recall rights to his/her county of layoff. If an employee takes reduction in lieu of layoff, he/she shall retain recall rights for their previous classification to his/her county of layoff and two additional counties.

Effective July 1, 2013, if an employee elects a lateral move, or is recalled to another county other than his/her primary county of layoff, he/she shall retain recall rights to his/her primary county of layoff. If an employee takes reduction in lieu of layoff, he/she shall retain recall rights for their previous classification to his/her primary county of layoff and two additional counties.

(4) A full-time employee subject to layoff or on layoff who exercises his/her right to bump into or take a vacancy in a part-time position shall remain on the appropriate recall lists for full-time positions.

(5) Recall shall be in the following order of priority:

i) Seniority among employees laid off from the same county as the position which is being filled; and,

ii) Seniority among employees who have elected to be listed on the recall list pursuant to this Section 4(a)(3).

b) Permanent vacancies not filled by recall or bid shall be offered to employees on higher level position classification recall lists provided such employees have not previously declined similar vacancies. Management is under no obligation to offer such permanent vacancies to employees on higher level

position classification recall lists if the qualifications for such positions are extremely restrictive and if it is determined that such employee would, therefore, not qualify for the permanent vacancy. To the extent practicable, new employees will not be hired for permanent vacancies when there is a recall list for a higher rated position classification within the same employing unit. Employees who have previously elected voluntary reductions or have been bumped down shall not be offered such vacancies if they remain employed by the Employer and the vacancy is equal to or lower rated than their present position.

c) An employee laid off shall retain and accumulate seniority and continuous service during such layoff not to exceed four (4) years. Nothing herein shall prohibit the parties from extending such period upon mutual agreement.

d) A laid off employee who fails to respond within ten (10) work days of the recall, or upon acceptance fails to be available for work within five (5) calendar days, shall forfeit all recall rights, unless the employee provides good cause for not so reporting. Notice of recall shall be sent by regular mail to the last known address of the employee being recalled.

e) The employee's right to recall shall exist for a period of four (4) years from the date of layoff. Nothing herein shall prohibit the parties from extending such period upon mutual agreement.

f) There shall be no appointments under Personnel Rules 302.90 and 302.580 (except as provided in this Agreement) to any position classification where there are employees with recall rights under this Agreement except where there is a demoted employee or an employee being reduced as a result of a layoff.

g) Employees who after layoff or voluntary reduction in lieu of layoff are returned to the former position classification from which they were laid off or voluntarily reduced shall be placed at a pay step based on creditable service as if uninterrupted.

h) If an employee is recalled and is unavailable to accept the position due to documented medical reasons, the agency may bypass the employee and the employee shall remain on the recall list.

i) If a probationary employee is recalled, he/she shall serve the remainder of his/her probationary period or no less than two (2) months, whichever is greater.

Section 5. Non-Scheduling of Intermittents

A) Department of Employment Security

The non-scheduling of intermittent employees shall be done on the basis of inverse seniority, applied among the employees at the immediate work location.

Utilization of intermittents is determined by seniority. Intermittents who are scheduled less than four (4) days a week in their parent Cost Center will be offered opportunity for listing in Regional Pools. They will continue attachment to their original Cost Center of assignment.

Available work will be offered to intermittents in these pools in order of seniority. Those accepting such work will be detailed to the new Cost Center.

Notice of non-scheduling shall be in writing, on a mutually agreed upon form, and shall be given to the employee and the Union before the mid-point of the previous work day.

At the conclusion of a detail assignment from the Pool, the intermittent may return to the original Cost Center, seniority permitting.

Any intermittent employee in non-work status for a period of two (2) calendar years shall be subject to termination.

Intermittents who have worked at least 1200 hours over the prior 18 months, and have been non-scheduled for more than half the normal work schedule over the most recent 180 calendar days, or intermittents who have been informed by the Department that they are unlikely to be scheduled for at least 180 days, shall upon request be designated as subject to layoff for the purpose of exercising their rights under Article XIX, Section 2B.c)Intra- and Inter-Agency Transfer on Recall and under Appendix A, Section 11 Laid Off and Furloughed Employees. Such rights under Article XIX, Section 2B.c)Intra- and Inter-Agency Transfer on Recall shall extend for a period of two (2) years from the last date scheduled. Conversion of Intermittent Employment Security Program Representatives and Intermittent Employment Security Service Representatives shall be conducted under Article XIX, Section 8 prior to these rights being afforded.

B) RC-42 Only

The non-scheduling of intermittent employees shall be done on the basis of inverse seniority, applied among the employees at the immediate work location.

Utilization of intermittents is determined by seniority.

When the employee reports for work on his/her regularly scheduled work day and is sent home from

the work site by the Employer, the employee shall be guaranteed two (2) hours straight time pay if he/she has not worked at least two hours that day.

Any intermittent employee in non-work status for a period of two calendar years, shall be subject to termination.

C) RC-10 only

The non-scheduling of intermittent employees shall be done on the basis of inverse seniority, applied among the employees at the immediate work location, unless mutually agreed otherwise.

Notice of non-scheduling shall be in writing, on a mutually agreed upon form, and shall be given to the employee and the Union before the mid-point of the previous work day, unless mutually agreed otherwise.

Any intermittent employee in non-work status for a period of two (2) calendar years shall be subject to termination.

Section 6. Workers' Compensation Commission Technical Advisors

a) An employee who is subject to layoff is defined as that employee who is scheduled to be laid off by the employing Agency or removed from his/her position, even though he/she still may be on the Agency's payroll. Workers' Compensation Commission Technical Advisors who were appointed by a Commissioner and working for the Illinois Workers' Compensation Commission shall be considered employees subject to layoff when they are not reappointed by a newly appointed Commissioner of the Workers' Compensation Commission, or when their original appointment was made by a different Commissioner, and they may not replace other Technical Advisors working for the

Workers' Compensation Commission who were appointed by a Commissioner nor are they subject to recall to Technical Advisor positions appointed by Commissioners of the Illinois Workers' Compensation Commission.

b) Technical Advisors working for the Workers' Compensation Commission not reappointed by a new Workers' Compensation Commission Commissioner shall not be subject to recall to an Workers' Compensation Commission Technical Advisor position appointed by a Commissioner of the Workers' Compensation Commission. Workers' Compensation Commission Technical Advisors shall be subject to recall rights pursuant to Section 4 of this Article to any other bargaining unit position other than a Technical Advisor position appointed by a Commissioner of the Illinois Workers' Compensation Commission.

c) A newly appointed Workers' Compensation Commission Commissioner shall have a period of up to six (6) months to evaluate a Technical Advisor appointed by a previously appointed Workers' Compensation Commissioner without the Technical Advisor gaining job status rights as an appointee of the newly appointed Workers' Compensation Commissioner. Retention beyond the six (6) months will be indicative of reappointment.

d) Workers' Compensation Commission Commissioners shall not be required to appoint Technical Advisors from a recall list to positions within the jurisdiction of the Workers' Compensation Commission Commissioner to appoint outside the parameters of the Personnel Code. Any other Technical Advisor position of the Workers' Compensation Commission covered under the jurisdiction of this bargaining unit shall be filled pursuant to the Agreement.

ARTICLE XXI
Continuous Service

Section 1. Definition

Continuous service is the uninterrupted period of service from the date of original appointment to State service, except as provided in Personnel Rule 302.250.

Employees who have accrued continuous service under a different merit system or who have accrued continuous service in State service not covered by any merit system and who move without a break in State service to a position covered by this Agreement shall be given such credit for said service.

Section 2. Interruptions in Continuous Service

Continuous service shall be interrupted by:

a) Resignation; provided, however, that such continuous service will not be interrupted by resignation when an employee is employed in another position in the State service within four (4) calendar days of such resignation;

b) Discharge; for just cause;

c) Termination; because an employee has been laid off for a period of three (3) years.

Section 3. Deductions from Continuous Service

Except as provided in Personnel Rule 302.240, the following shall be deducted from, but not interrupt continuous service:

a) Time away from work for any leaves of absence without pay totaling more than thirty (30) days in any twelve (12) month period, except time away from work for a leave of absence to accept a temporary, provisional, emergency or exempt

assignment in another class, or in other leaves of absence where employees are allowed to accumulate seniority under the provisions of this Agreement, shall not be deducted from continuous service.

b) Time away from work because of disciplinary suspensions for just cause totaling more than thirty (30) days in any twelve (12) month period shall be deducted from seniority and/or continuous service, whichever is applicable.

ARTICLE XXII
Geographical Transfer

In the event a geographical transfer under Personnel Rule 302.430 (the transfer of an employee from one geographical location in the State to another for the performance of duties other than temporary assignments or detailing for the convenience of the Employer) is required, seniority as defined in Article XVIII shall govern, the highest given first preference. If no employee wishes to accept such transfer, the least senior employee in the affected position classification shall be required to take such transfer. If an employee refuses the geographical transfer, the employee will be afforded the right to move into an equal or lower level vacant position only within his/her Agency pursuant to Article XX, Section 3(b). In the event that the employee takes the geographical transfer, refuses the geographic transfer, or moves to vacancy as outlined above, such employee shall have recall rights as set forth in Article XX, Section 4, Recall, however, such recall rights shall be limited to the agency at which the employee was employed at the time he/she was made the subject of a geographic transfer. An employee shall be reimbursed for all reasonable transportation and moving expenses incurred in moving to a new location

because of an involuntary permanent geographical transfer.

It is understood that the term geographical transfer includes both transfers across county lines, and, within Cook County, transfers of a significant distance.

Appeals of geographical transfer must be filed pursuant to the Memorandum of Understanding.

ARTICLE XXIII
Leaves of Absence

Section 1. General Leave

The Employer may grant leaves of absence without pay to employees for periods not to exceed six (6) months. Such leaves may be extended for good cause by the Employer for additional six (6) month periods. Any request for such leave shall be made in writing by the employee reasonably in advance of the leave unless precluded by emergency conditions, stating the purpose of the leave, the expected duration of absence, and any additional relevant information.

Section 2. Leave for Elected Office

Any employee who is elected to a State office shall, upon request, be granted a leave of absence for the duration of the elected term.

Section 3. Educational Leave

a) A leave of absence for a period not to exceed one (1) year may be granted to an employee in order that the employee may attend a recognized college, university, trade or technical school, high or primary school, provided that the course of instruction is related to the employee's employment opportunities with the State and is of potential benefit to his/her

State service. Before receiving the leave, or an extension thereof, the employee shall submit to the Employer satisfactory evidence that the college, university or other school has accepted him/her as a student and, on the expiration of each semester or other school term, shall submit proof of attendance during such term. Such leaves may be extended for good cause for additional periods not to exceed one (1) year each. Such leaves or extensions thereof shall not be unreasonably denied.

b) If because of changes in certification, accreditation or licensure employees are required by the Employer to take courses on a part-time basis so as to retain their present position classification such employees shall be granted reasonable time for such without loss of pay. Those employees required to take courses on a full-time basis will be granted a leave of absence without pay. Where employees retain classification status despite increased standards by exercise of Article XXVI, Section 4, such employees shall be eligible for the leaves or time off as provided above if so required by the Employer to attend such courses.

Section 4. Veterans' Leave

Leaves of absence shall be granted to employees who leave their positions and enter military service for five (5) years or less (exclusive of any additional service imposed pursuant to law). An employee shall be restored to the same or a similar position on making an application to the Employer within ninety (90) days after separation from active duty or from hospitalization continuing after discharge for not more than one (1) year. The employee must provide evidence of satisfactory completion of training and military service when making application and be qualified to

perform the duties of the position. Any permanent employee drafted into military service shall be allowed up to three (3) days leave with pay to take a physical examination required by such draft. Upon request, the employee must provide the Employer with certification by a responsible authority that the period of the leave was actually used for such purpose.

Section 5. Military Reserve Training and Emergency Call-up

a) Any full-time employee who is a member of a reserve component of the Armed Services, the Illinois National Guard or the Illinois Naval Militia, shall be allowed annual leave with pay in accordance with the provisions of 5 ILCS 325 et seq. to fulfill the military reserve obligation. Such leaves will be granted without loss of seniority or other accrued benefits.

b) In the case of an emergency call-up (or order to State active duty) by the Governor, the leave shall be granted for the duration of said emergency with pay and without loss of seniority or other accrued benefits. Military earnings for the emergency call-up paid under the Illinois Military Code must be submitted and assigned to the employing agency, and the employing agency shall return it to the payroll fund from which the employee's payroll check was drawn. If military pay exceeds the employee's earnings for the period, the employing agency shall return the difference to the employee.

c) To be eligible for military reserve leave or emergency call-up pay, the employee must provide the employing agency with a certificate from the commanding officer of his/her unit that the leave taken was for either such purpose.

d) Any full-time employee who is a member of any reserve component of the United States Armed Forces or of any reserve component of the Illinois State Militia shall be granted leave from State employment for any period actively spent in such military service including basic training and special or advanced training, whether or not within the State, and whether or not voluntary.

e) During such basic training and up to sixty (60) days of special or advance training, if such employee's compensation for military activities is less than his/her compensation as a State employee, he/she shall receive his/her regular compensation as a State employee minus the amount of his/her base pay for military activities. During such training, the employee's seniority and other benefits shall continue to accrue.

Section 6. Peace or Job Corps Leave

Any employee who volunteers and is accepted for service in the overseas or domestic Peace or Job Corps shall be given a leave of absence from employment for the duration of the initial period of service and restored to the same or similar position, provided that the employee returns to employment within ninety (90) days of the termination of the employee's service or release from hospitalization from a service-connected disability.

Section 7. Adoption Leave

Employees shall be granted leaves of absence without pay for a period not to exceed one (1) year for the adoption of a child. Such leave may be extended pursuant to Section 9 of this Article.

Section 8. Child Care Leave

Employees shall be granted leaves of absence without pay for a period not to exceed six (6) months for the purposes of child care in situations where the employee's care of the child is required to avoid unusual disturbances in the child's life. Such leave may be renewed pursuant to Section 1 above. Any request for such leave shall be made in writing by the employee reasonably in advance of the leave unless precluded by emergency conditions, stating the purpose of the leave, the expected duration of absence, and any additional relevant information.

Section 9. Family Responsibility Leave

a) An employee who wishes to be absent from work in order to meet or fulfill responsibilities, as defined in subsection (f) below, arising from the employee's role in his or her family or as head of the household may, upon request and in the absence of another more appropriate form of leave, be granted a Family Responsibility Leave for a period not to exceed one year. Such request shall not be unreasonably denied. Employees shall not be required to use any accumulated benefit time prior to taking Family Responsibility Leave.

b) Any request for such leave shall be in writing by the employee reasonably in advance of the leave unless precluded by emergency conditions, stating the purpose of the leave, the expected duration of absence, and any additional information required by agency operations.

c) Such leave shall be granted to any permanent full-time, or part-time employee pursuant to the Family Medical Leave Act, except that an intermittent

employee shall be non-scheduled for the duration of the required leave.

d) "Family Responsibility" for purposes of this Section is defined as the duty or obligation perceived by the employee to provide care, full-time supervision, custody or non-professional treatment for a member of the employee's immediate family or household under circumstances temporarily inconsistent with uninterrupted employment in State service.

Subject to the time limits of this Section and to the standards of Section 9(f) below, an employee, upon request, shall be permitted to work a part-time schedule unless to do so would interfere with the operating needs of the Agency. For purposes of the Memorandum of Agreement entitled Part-Time Employees, the employee shall be considered a full-time employee.

e) "Family" has the customary and usual definition for this term for purposes of this Section, that is:

1) group of two or more individuals living under one roof, having one head of the household and usually, but not always, having a common ancestry, and including the employee's spouse, and/or civil union partner;

2) such natural relation of the employee, even though not living in the same household, as parent, sibling or child; or

3) adoptive, custodial and "in-law" individuals when residing in the employee's household or any relative or person living in the employee's household for whom the employee has custodial responsibility or where such person is financially and emotionally

dependent on the employee and where the presence of the employee is needed but excluding persons not otherwise related of the same or opposite sex sharing the same living quarters but not meeting any other criteria for "family".

f) Standards for granting a Family Responsibility Leave are:

1) to provide nursing and/or custodial care for the employee's newborn infant, whether natural born or adopted for a period not to exceed one (1) year;

2) to care for a temporarily disabled, incapacitated or bedridden resident of the employee's household or member of the employee's family;

3) to furnish special guidance, care or supervision of a resident of the employee's household or a member of the employee's family in extraordinary need thereof;

4) to respond to the temporary dislocation of the family due to a natural disaster, crime, insurrection, war or other disruptive event;

5) to settle the estate of a deceased member of the employee's family or to act as conservator if so appointed and providing the exercise of such functions precludes the employee from working; or,

6) to perform family responsibilities consistent with the intention of this Section but not otherwise specified.

g) If an agency requires substantiation or verification of the need by the employee for such leave, the substantiation or verification shall be consistent with and appropriate to the reason cited in requesting the leave, such as:

1) a written statement by a physician or medical practitioner licensed under the "Medical Practices Act" (225 ILCS 60 et seq.) or under similar laws of Illinois or of another state or country or by an individual authorized by a recognized religious denomination to treat by prayer or spiritual means, or by a person who holds a current national certification as a nurse practitioner. Such verification shall show the diagnosis, prognosis and expected duration of the disability requiring the employee's presence.

2) written report by a social worker, psychologist, or other appropriate practitioner concerning the need for close supervision or care of a child or other family member;

3) written direction by an appropriate officer of the courts, a probation officer or similar official directing close supervision of a member of the employee's household or family; or

4) any reasonable independent verification substantiating that the need for such leave exists.

h) Such leave may not be renewed, however a new leave may be granted at any time for any appropriate reason other than that for which the original leave was granted.

i) If an agency has reason to believe that the condition giving rise to the given need for such leave no longer exists during the course of the leave, it should require further substantiation or verification and, if appropriate, direct the employee to return to work on a date certain.

j) Failure of an employee, upon reasonable request by the employing agency, to provide such

verification or substantiation timely may be cause, on due notice, for termination of the leave.

k) Such leave shall not be used for the purpose of securing alternative employment. An employee during such leave may not be gainfully employed full time, otherwise the leave shall terminate.

l) Upon expiration of a Family Responsibility Leave, or prior to such expiration by mutual agreement between the employee and the employing agency, the agency shall return the employee to the same or similar position classification that the employee held immediately prior to the commencement of the leave. If there is no such position available, the employee will be subject to layoff in accordance with the Section on Voluntary Reduction and Layoff.

m) Nothing in this Section shall preclude the abolition of the position classification of the employee during such leave nor shall the employee be exempt from the Section on Voluntary Reduction and Layoff by virtue of such leave.

n) The Employer shall pay its portion of the employee's health and dental insurance (individual or family) for up to six(6) months while an employee is on Family Responsibility Leave and also would qualify for a leave pursuant to the criteria set forth in the Family and Medical Leave Act of 1993.

Section 10. Leave for Union Office

The Employer shall grant requests for leaves of absence for not more than thirty (30) bargaining unit employees at any one time for the purpose of service as AFSCME representatives or officers with the International, State, or Local organization of the Union for up to a maximum of two (2) years each,

provided the requests for such leave shall normally be made a minimum of five (5) working days prior to the effective date of the leave and the granting of such leave will not substantially interfere with the Employer's operations. Such leaves shall be in increments of no less than one (1) month. The number and length of such leaves may be increased or decreased by mutual agreement of the parties. Leaves currently in effect shall be extended for the duration of the Agreement if so requested.

Section 11. Leave to Take Exempt Position

The Director of Central Management Services may approve leaves of absence for certified employees who accept appointment in a State position which is exempt from Jurisdiction "B" of the Personnel Code. Such leaves of absence may be for a period of one (1) year or less and may be extended for additional one (1) year periods.

Section 12. Attendance in Court

Any employee called for jury duty or subpoenaed by a legislative, judicial, or administrative tribunal, shall be allowed time away from work with pay, except in matters of non-work related personal litigation, for such purposes. Upon receiving the sum paid for jury service or witness fees, the employee shall submit the warrant, or its equivalent, to the agency to be returned to the fund in the State Treasury from which the original payroll warrant was drawn. Provided, however, an employee may elect to fulfill such call or subpoena on accrued time off and personal leave and retain the full amount received for such service. An employee called for reasons contained herein shall have such days considered as days worked for the purpose of scheduling and shall be given

commensurate days off from work on his/her next scheduled work day(s) for any days which he/she would otherwise not have worked. Employees selected to serve on a jury shall, upon request receive temporary work schedule change to the day shift for the duration of his/her jury duty period.

An employee subpoenaed by a legislative, judicial, or administrative tribunal for non-work related personal litigation shall be granted benefit time if such time is available or authorized dock time at the employee's choice.

Section 13. Leave to Attend Professional Meetings

Employees shall be granted reasonable amounts of leave with pay to attend professional meetings when related to state employment and approved in advance by the Employer.

Section 14. Leave for Personal Business

A. All employees shall be permitted three (3) personal days off each calendar year with pay. Employees entitled to receive such leave who enter service during the year shall be given credit for such leave at the rate of one-half (1/2) day for each two (2) months' service for the calendar year in which hired. Such personal leave may not be used in increments of less than one-half (1/2) hour at a time. Supervisors may however, grant employee requests to use personal leave in increments of fifteen (15) minutes after a minimum use of one-half (1/2) hour. Except for those emergency situations which preclude the making of prior arrangements, such days (or hours) off shall be scheduled sufficiently in advance to be consistent with operating needs of the Employer. Personal leave shall not accumulate from calendar year to calendar year; nor shall any employee be entitled to payment for

unused personal leave upon separation from the service, unless such separation is due to retirement, disability or death, in which event the employee, or the employee's estate, as the case may be, shall be paid a lump sum for the number of days for leave for personal business which the employee had accumulated but not used as of the day his/her services were terminated, in an amount equal to one-half (1/2) of his/her pay per working day times the number of such leave days so accumulated and not used.

B. When requested within current procedural guidelines, with reasonable advance notice, personal business days shall be granted, unless an emergency of an extreme nature would cause cancellation of such day off. When an employee is claiming an emergency situation in regards to use of a personal business day, the Employer has the right to inquire as to the nature of the emergency, although normally such inquiry would occur when reasonable grounds exist to suggest abuse, or if an operational emergency of an extreme nature exists.

The necessity of overtime assignment shall not be a consideration in the granting of requested personal time under this Section 14.

C. If an employee claims the use of an emergency personal business day on holidays listed in this Agreement, or on the day before or day after said holiday, the Employer has the right, upon request, to require documentation of the emergency when reasonable grounds exist to suggest abuse.

Section 15. Sick Leave

A. All employees shall accumulate paid sick leave at the rate of one (1) day for each month's service. Sick leave may be used for illness, disability, or injury of

the employee, appointments with a doctor, dentist or other professional medical practitioner (including a person who holds a current national certification as a nurse practitioner), and in the event of illness, disability, injury, appointments with a doctor, dentist or other professional medical practitioner (including a person who holds a current national certification as a nurse practitioner), or death of a member of an employee's immediate family or household. For purposes of definition, the "immediate family or household" shall be husband, wife, civil union partner, mother, father, mother-in-law, father-in-law, brother, sister, children, grandchildren or any relative or person living in the employee's household for whom the employee has custodial responsibility or where such person is financially and emotionally dependent on the employee and where the presence of the employee is needed. Sick leave may also be used in the event of death of grandrelations and parent-and child-in-laws and brother and sister-in-laws. Such days may be used in increments of no less than one (1) hour at a time for RC-10, 14, 28, 42, 62 and 63 bargaining unit employees. For RC-6 and 9 bargaining unit employees, except for pre-scheduled office visits or examinations which may be charged against sick leave in one (1) hour increments, sick leave shall be used in one-half (1/2) day increments. For all bargaining units, supervisors may however, grant employee requests to use sick leave in increments of fifteen (15) minutes after a minimum use of one-half (1/2) hour. The Employer will not discipline an employee for legitimate use of sick days if taken within procedural guidelines. The Employer may request evidence, which may be in the form of a written medical certification of use of sick leave if reasonable grounds exist to suspect abuse. If the Employer demands an additional form of proof,

different than that which was furnished by the employee, and involves cost to the employee, the Employer shall pay the cost of such professional services when such verifies that the employee was not abusing sick leave. When the employee is directed to obtain such evidence during his/her hours of scheduled work, the employee shall be allowed time off without loss of pay or other benefits. Abuse of sick time is the utilization of sick days for reasons other than those stated in the Collective Bargaining Agreement. Visits of four (4) days per year to a Veterans' hospital or clinic for examination needed because of military service connected disability shall be in pay status without charge to sick leave.

B. Guidelines on Proof Status. At the time an employee is placed on proof status, the Employer will submit to the employee, in writing, the reasons for placing the employee on proof status. The amount of usage of sick time alone shall not be the basis for placing an employee on proof status. Proper medical certification must contain the following elements:

a. Signature, address, and phone number of the medical practitioner (or authorized designee).

b. The pertinent date(s) in question of the illness or injury.

c. An indication that the employee was unable to work on the date(s) in question for reasons of personal or family illness.

d. The original medical statement must be submitted; if the employee needs a copy management will provide.

Notwithstanding the above, the Employer may accept an electronically generated statement with an

electronic signature or a facsimile with cover page, as long as the necessary information is provided as set forth in (a), (b), (c) and (d).

An employee, not on proof status, who utilizes sick leave may, at the employee's discretion provide medical certification for any such absence and have such certification included in his/her supervisor's file. Absences for which medical certification has been provided shall not be a consideration in the determination of whether or not to place an employee on proof status.

C. An employee who is in pay status for a minimum of 979 hours to a maximum of 1957.5 hours in a calendar year, shall be awarded the equivalent pro-rated value of one additional personal day on January 1st of each calendar year, if no sick time was used in the preceding twelve (12) month period, beginning on January 1st and ending on December 31st. Such additional personal day shall be liquidated in accordance with Section 14 of this Article. Overtime hours paid do not count towards the minimum and maximum hours above.

Section 16. Payment in Lieu of Sick Leave

a) Upon termination of employment for any reason, upon movement from a position subject to the Personnel Code to another State position not subject to the Code, or upon indeterminate layoff, an employee or the employee's estate is entitled to be paid at half rate for unused sick leave which has accrued on or after January 1, 1984, and prior to January 1, 1998, provided the employee is not employed in another position in State service within four (4) calendar days of such termination.

b) For purposes of this Section sick leave is deemed to be used by an employee in the same order it is granted, that is, the earliest accrued sick leave is liquidated first.

Effective January 1, 1998, sick leave used by an employee shall be charged against his or her accumulated sick leave in the following order: first, sick leave accumulated before January 1, 1984; then sick leave accumulated on or after January 1, 1998; and finally sick leave accumulated on or after January 1, 1984 but before January 1, 1998.

c) In order to determine the amount of sick leave to be paid upon termination of employment, the operating agency will: (i) compute the amount of sick leave granted to the employee on and after January l, 1984 and prior to January 1, 1998; (ii) compute the employee's leave balance at time of termination; and (iii) cause lump sum payment to be paid for one half of the amount of (i) or (ii), whichever is the lesser amount.

d) In the event an employee has a negative sick leave balance when employment is terminated, no payment shall be made to the employee and the unrecouped balance due is canceled.

e) An employee who is reemployed, reinstated or recalled from indeterminate layoff and who received lump sum payment in lieu of unused sick days may have such days restored by returning the gross amount paid by the State for the number of days to be so restored to the employee's sick leave account.

f) An employee shall be allowed to carry over from year to year of continuous service any unused sick leave allowed under this Section and shall retain any

unused sick leave or emergency absence leave accumulated prior to December 19, 1961.

g) Accumulated sick leave available at the time an employee's continuous State service is interrupted for which no salary payment is made shall upon verification be reinstated to the employee's account upon return to full time or regularly scheduled part-time employment except in temporary or emergency status. This reinstatement is applicable provided such interruption of service occurred not more than five (5) years prior to the date the employee reenters State service and provided such sick leave has not been credited by the appropriate retirement system towards retirement benefits.

h) An employee taking leave to provide nursing and/or custodial care for the employee's newborn infant, whether natural born or adopted, shall not be required to use any amount of accumulated sick leave he/she does not request.

i) The guidelines for enrollment and usage of Sick Leave Banks are enumerated in the Memorandum of Understanding entitled "Sick Leave Bank".

Section 17. Carry-Over

Employees shall be allowed to carry over from year to year of continuous service any unused sick leave allowed under this provision and shall retain any unused sick leave accumulated prior to the effective date of this Agreement.

Section 18. Advances

Any employee with more than two (2) years continuous service, whose personnel records warrant it may be advanced sick leave with pay for not more than ten (10) working days with the written approval

of the Employer. Such advances will be charged against sick leave accumulated later in subsequent service.

Section 19. Service-Connected Injury and Illness

An employee who suffers an on-the-job injury or who contracts a service-connected disease, shall be allowed full pay during the first calendar week without utilization of any accumulated sick leave or other benefits, provided the need for the absence is supported by medical documentation. This allowance with full pay for up to one calendar week shall be made in advance of the determination as to whether the injury or illness is service connected. If, within 30 days of the date of the allowance of full pay under this section, the employee has failed to complete the required paperwork and submit documentation to reach a decision regarding the service connected nature of the injury or illness, the time granted may be rescinded and the days will be charged against the employee's accumulated benefit time. Thereafter, the employee shall be permitted to utilize accumulated sick leave. In the event such service-connected injury or illness becomes the subject of an award by the Workers' Compensation Commission, the employee shall restore to the State the dollar equivalent which duplicates payment received as sick leave days, and the employee's sick leave account shall be credited with the number of sick leave days used. An employee who suffers an on-the-job injury or who contracts a service-connected disease shall not be required to utilize any accumulated sick days prior to being granted an illness or injury leave under Section 21, below.

Employees whose compensable service-connected injury or illness requires appointments with a doctor, dentist, or other professional medical practitioner

shall with supervisor approval be allowed to go to such appointments without loss of pay and without utilization of sick leave.

Section 20. Alternative Employment Program

The Employer will implement an alternative employment program for any employee who is able to perform alternative employment after a work related or non-work related disability which precludes that employee from performing his or her currently assigned duties pursuant to P.A. 84-876 as it pertains to Section 8c (6) of the Personnel Code.

Section 21. Illness or Injury Leave (Non-service Connected)

Employees who have utilized all their accumulated sick leave days (except as provided in Section 19 above) and are unable to report to or back to work because of the start of or continuance of their sickness or injury, including pregnancy related disability, shall receive a non-service disability leave. During said leave the disabled employee shall provide written verification by a person licensed under the Illinois Medical Practice Act or under similar laws of Illinois (including a person who holds a current national certification as a nurse practitioner). Such verification shall show the diagnosis, prognosis and expected duration of the disability; such verification shall be made no less often than every thirty (30) days during a period of disability unless the nature of the illness precludes the need for such frequency. Prior to requesting said leave, the employee shall inform the Employer in writing the nature of the disability and approximate length of time needed for leave. The written statement shall be provided by the attending physician. If the Employer has reason to believe the employee is able or unable to

perform his/her regularly assigned duties and the employee's physician certifies he/she as being able or unable to report back to work the Employer may rely upon the decision of an impartial physician as to the employee's ability to return to work. Such examination shall be paid for by the Employer. The Employer will not arbitrarily deny such leave request.

Section 22. Treatment of Seniority

a) A certified employee shall retain and continue to accumulate seniority and continuous service while on leaves provided for under this Article except those leaves under Section 21 accumulation shall not exceed three (3) years and Sections 1 and 2 where there shall be no accumulation of seniority and continuous service. A probationary employee serving an initial probation shall not accumulate seniority during such leave beyond the amount of time they have been employed with the State provided that such accumulation shall not reduce the probationary period.

b) Seniority and continuous service for intermittents on leave of absence shall accrue by the ratio of hours paid to full time for the three (3) months prior to leave or the three (3) months prior to being involuntarily non-scheduled as a result of the 1500 hours limit if such limit was reached in the Cost Center during the three (3) months prior to the leave.

Section 23. Employee Rights After Leave

When an employee returns from any leave of absence permitted by this Agreement, the Employer shall return the employee to the same or similar position in the same position classification in which the employee was incumbent prior to the commencement of such leave, seniority permitting. If the

employee does not have the seniority, the layoff provisions of this Agreement shall apply.

Section 24. Failure to Return from Leave

Failure to return from a leave of absence within five (5) days after the expiration date thereof may be cause for discharge, unless it is impossible for the employee to so return and evidence of such impossibility is presented to the Employer within five (5) days after the expiration of the leave of absence or as soon as physically possible.

Section 25. Resolution of Leave Disputes

If a dispute is present regarding an employee's ability to perform his/her assigned duties, including light duty in agencies with such policies, the parties shall seek and rely on the decision of an impartial physician who is not a State employee. Any physician used in accordance with this Section must be mutually agreed to by the parties.

In the case of a dispute involving service connected injury or illness, no action shall be taken which is inconsistent with relevant law and/or regulations of the Illinois Workers' Compensation Commission. Such determination shall pertain solely to an employee's right to be placed on or continued on illness or injury leave, including service connected illness or injury leave. For service connected illness or injury leave the right to select the impartial physician shall be between the Union and the Department of Central Management Services.

Section 26. Maternity/Paternity Leave

All employees who provide proof of their pregnancy or that of their female partner at least 30 days prior to the expected due date will be eligible for 4 weeks (20

work days) of paid maternity/paternity leave for each pregnancy resulting in birth or multiple births. Should both parents be employees they shall be allowed to split the 4 weeks (20 work days). No employee will be allowed to take less than a full work week (5 consecutive days). Regardless of the number of pregnancies in a year, no employee shall receive more than 6 weeks (30 work days) of paid leave under this Section per year. The State shall require proof of the birth. In addition, non-married male employees may be required to provide proof of paternity such as a birth certificate or other appropriate documentation confirming paternity. Leaves under this Section shall also be granted in cases of a full term still born child.

All bargaining unit members are eligible for four (4) weeks (20 days) of paid leave with a new adoption, with the leave to commence when physical custody of the child has been granted to the member, provided that the member can show that the formal adoption process is underway. In the event the child was in foster care immediately preceding the adoption process the leave will commence once a court order has been issued for permanent placement and the foster parent has been so notified of their right to adopt as long as the foster child has not resided in the home for more than three (3) years. The agency personnel office must be notified, and the member must submit proof that the adoption has been initiated. Should both parents be employees they shall be allowed to split the 4 weeks (20 work days). No employee will be allowed to take less than a full work week (5 consecutive work days). Regardless of the number of adoptions in a year, no individual shall receive more than 6 weeks (30 work days) of paid leave under this Section per year.

Maternity/Paternity leave is for the purpose of bonding with the new member of the household. Employees are not eligible for the above referenced leave in the event the adoption is for a step-child or relative with whom the employee has previously established residency for a period of one (1) year or more.

Section 27. Family Medical Leave Act

Employees who qualify for intermittent leave pursuant to the Family Medical Leave Act shall be granted such intermittent leave.

ARTICLE XXIV
Personnel Files

Section 1. Number, Type and Content

Only one (1) personnel file shall be maintained at a facility for each employee and the Agency shall have the right to maintain a personnel file at their central office. The Department of Central Management Services shall keep and maintain an official personnel file for employees, which shall contain no information not in the facility (work location) file. No other files, records or notations shall be kept by the Employer or any of its representatives except as may be prepared or used by the Employer or its counsel in the course of preparation for any pending case, such as an DHR or Civil Service matter or grievance. (RC-6-9-10-14-28-42-62 & 63)

A regional office personnel file may also be maintained by an agency. Such file, however, shall contain no information not in the work location file. (RC-10, RC-14, RC-28, RC-42, RC-62 & RC-63)

Section 2. Supervisor's Files

An employee's supervisor may maintain a file pertaining to an employee which shall contain job related information only. It shall be the supervisor's responsibility to inform the employee of any detrimental material in the file that may affect the employee's performance evaluation. An employee may grieve over the factuality or propriety of any material in such file. Such files shall be confidential. Both parties agree that an employee's failure to challenge any material in such file does not justify the conclusion that the employee is in agreement with any such material. The file shall not follow the employee upon leaving the jurisdiction of the supervisor. However, nothing precludes the supervisor from conducting a performance evaluation (CMS-201) at the time an employee leaves his/her jurisdiction. Any detrimental material shall be removed from the file after twelve (12) months from the date of placement of such. Such files shall not contain a copy of any disciplinary action against an employee.

Section 3. Employee Review

Employees and/or their authorized Union representatives if authorized by the employee shall have the right, upon request, to review the contents of their personnel files and supervisor's files. Such review may be made during working hours, with no loss of pay for time spent, and the employee may be accompanied by a Union representative if he/she so wishes. Reasonable requests to copy documents in the files shall be honored.

Section 4. Employee Notification

A copy of any disciplinary action or material related to employee performance which is placed in the personnel file shall be served upon the employee (the employee so noting receipt), or sent by certified mail (return receipt requested) to his/her last address appearing on the records of the Employer. It is the obligation of each employee to provide the Employer with his/her current address.

Section 5. Non-Job Related Information

Detrimental information concerning non-merit factors not related to the performance of job duties shall not be placed in an employee's personnel file, nor be placed in a supervisor's file so maintained for the employee.

Section 6. Telephone Numbers

Upon request of the Employer, an employee shall provide the Employer with his/her current phone number. The Employer shall not release an employee's phone number and/or address to non-work related sources without the employee's permission.

Section 7. Privacy

The Employer shall take the necessary steps to protect the integrity of employee information. Access to such information shall be limited to those individuals or entities for whom the information is essential. The Employer shall be able to identify persons or entities that have had access to the information. The parties recognize the Employer's obligation to comply with Federal and State laws which help ensure the confidentiality of employees' personal information including, but not limited to the Personnel Records Review Act (820 ILCS 40/0.01) and the Federal Health

Insurance Portability and Accountability Act of 1996 (HIPAA), (Pub. L. No. 104-191).

ARTICLE XXV

Working Conditions, Safety and Health

Section 1. Safety and Health

The parties agree that joint labor/management safety and health committees for each work location shall promptly and regularly meet for the purposes of identifying and correcting unsafe or unhealthy working conditions which may exist considering the nature and requirements of the respective work locations, including:

(i) Inadequate or insufficient lighting for the performance of bargaining unit work;

(ii) Inadequate, insufficient or improperly marked first aid chests;

(iii) Excessive noise levels;

(iv) Inadequately supplied, unclean or unsanitary restrooms;

(v) Inadequate personal security for employees;

(vi) Indoor Air Quality;

(vii) Working conditions that are not ergonomically correct;

(viii) Unsafe vehicles.

(ix) Workplace violence.

Where, following such meetings, agreement is reached as to the existence of the unsafe or unhealthy working condition, the Employer shall attempt to correct it within a reasonable time, utilizing existing budget funds. If no budget funds are then available,

the Employer shall make provisions for such corrections in its next budget. Notwithstanding the above, a health and safety problem which is a violation of an OSHA standard, as either determined by OSHA or mutually agreed to by the parties, shall be remedied in accordance with the law. Subject to the operating needs of the Employer and with reasonable advance notice, the Union shall have the right to have the premises inspected by an inspector of the Union's choosing, at no expense to the Employer.

In the event a grievance over Section 1 and 2 of this Article proceeds to Step 4b of the grievance procedure, the arbitrator shall determine:

(i) Whether the claimed unsafe or unhealthy working condition exists;

(ii) If so, whether the Employer's proposed remedy thereof is reasonable and in accordance with Section 2 of this Article under the relevant circumstances.

If the arbitrator determines that the claimed unsafe or unhealthy working condition exists and the Employer's proposed remedy is unreasonable, he/she shall order it corrected and the Employer shall make every effort to correct it using the best means available to do it. Provided, however, that where funds for the remedy have not been budgeted, the Employer shall make every effort to secure the necessary funds to correct the condition. Notwithstanding the above, a health and safety problem which is a violation of an OSHA standard, as either determined by OSHA or mutually agreed to by the parties, shall be remedied in accordance with the law.

Where a clear and present danger exists, the Union may grieve at any time at Step 4a.

Section 2. State Health and Safety Program

The Employer shall provide a safe work environment consistent with the standards set by the Illinois Department of Labor.

The Employer and the Union shall act cooperatively to develop workplace violence programs designed to eliminate violence in the workplace.

The Employer shall designate a Safety Officer for each agency with 500 or more employees.

Section 3. Working Conditions

The Employer shall endeavor to provide:

(i) Adequate lounge and/or eating areas, separated from patients, clients, and employees' normal areas of work, as agreed in local supplements.

(ii) Prompt repair and service to mechanical equipment used by employees in the course of their normal work duties.

(iii) All State owned or leased vehicles which fall under the Department of Central Management Services' Vehicle Rules shall undergo regular service and/or repair in order to maintain the vehicles in roadworthy, safe operating conditions.

Agencies shall have vehicles inspected by DCMS at least once per year and shall maintain vehicles in accordance with the schedules provided by DCMS or other schedules acceptable to DCMS that provide for proper care and maintenance of special use vehicles.

(iv) All work sites and vehicles shall be smoke-free. Where applicable, the parties shall negotiate smoking policies compliant with the Smoke Free Illinois Act (Public Act 95-0017), through supplemental negotiations at the facility or agency level

pursuant to the Memorandum of Understanding entitled Supplementary Agreements. In addition, at any time during the term of this agreement, either party may propose smoking policies at a work site, or changes to such policies in compliance with the Act. The parties shall negotiate for ninety (90) days, at which time either party may move the issue to arbitration pursuant to the Memorandum of Understanding entitled Special Grievances. The Arbitrator shall consider the reasonableness of each party's position.

Section 4. Meals

a) Employees shall be provided with free meals in accordance with the present practices and policies.

b) DOC/DJJ:

(i) The present practice with regards to providing meals for employees in work release facilities shall continue. All employees working in other Department of Corrections and Juvenile Justice facilities shall be entitled to at least one (1) free meal, provided by the Employer during the course of their normal shift hours.

(ii) Employees working in Juvenile facilities may be provided with more than one (1) free meal dependent upon the present practices and policies.

c) Other meals shall be provided in accordance with the present travel regulations of the Department of Central Management Services.

Section 5. Damage to Personal Property

In accordance with the current agency practices and the amounts provided for thereunder, employees shall be reimbursed for the cost of any personal property destroyed or damaged in the line of duty. The

Employer will also endeavor to provide a secure place for storing wearing apparel.

Upon request, agency labor/management meetings may review the establishment or revision of conditions for reimbursing employee claims deriving from damages to or destruction of personal property articles by the direct action of residents or clients against the person of the employee, including time limits for reporting and rates of reimbursement.

Section 6. Privacy

Subject to security requirements the Employer shall respect the privacy of an employee's personal belongings. Consistent with applicable laws, the Employer retains the right to control or inspect property that it owns or maintains, including, but not limited to, items such as desks, lockers, desk and cabinet drawers, vehicles, and computers. In the event the Employer is inspecting property controlled by the Union, it shall do so in the presence of a Union representative.

Section 7. Hazardous Traveling Conditions

Where extreme weather conditions, in the Department of Central Management Services' judgment, require early dismissal, all employees within the same geographical area shall be treated equally subject to the operating needs of the agency.

Section 8. Communicable Disease

In case of a suspected outbreak of a communicable disease, the Employer shall offer tests for such within the appropriate affected area, at no cost to the employees, where it gives such tests to the residents.

In cases of suspected exposure to TB, MRSA or Hepatitis B, the Employer shall offer free testing, shots and time off (as may be medically required) to

DCFS, DHS, DNR, DPH, DVA and IDOC/DJJ employees in the affected area.

Section 9. Equipment and Clothing

Protective equipment and wearing apparel, as required by the Employer, shall be provided and cleaned by the Employer, and shall be made by workers represented by a bona fide labor organization if such bids are no more than 10% higher than a non-union supplier's bid or unless no bidders whose employees are represented by a bona fide labor organization respond to the public bid notice.

All Revenue Special Agents will be provided a bullet proof vest and a weapon by the Employer, at no cost to the employee.

Effective July 1, 2009, all Department of Veterans' Affairs bargaining unit employees required to wear scrubs and special shoes at their own expense shall receive a uniform allowance of $500 per year.

Section 10. Computer Equipment/ Video Display Terminals /Cathode Ray Equipment

The Employer and the Union will attempt to keep current with monitoring studies and reports on the effects, if any, of computer equipment and their affects on the health and safety of the operators. The parties also agree to summarize any relevant findings and disseminate them to user agencies and health and safety committees.

When an Agency purchases new office equipment utilized by personnel operating computer equipment, it shall contain glare screens if necessary, chairs with adjustable heights and back rests, foot rests and adjustable tables for holding keyboards.

Pregnant employees and employees who are nursing and who regularly operate Video Display Terminals may, upon request, be permitted to adjust or otherwise change assignment, if such adjustment or change can reasonably be made and is consistent with the state's operating needs.

If such adjustment or change cannot be made, the employee shall, upon request, be granted illness or appropriate leave, for the duration of the pregnancy and/or nursing, pursuant to the appropriate Leave of Absence provision.

Section 11. Aircraft Pilots only (RC-62)

The Employer shall reduce to writing a "Flight Operations Manual" with a copy to each Pilot and the Union. The Union will be allowed reasonable opportunities to meet and have input in the creation of the manual or any subsequent change prior to its adoption and implementation.

Section 12. Hearing Tests for Telecommunicators/ Call Takers

Effective July 1, 1997, the State will provide a hearing test on site, once per year, for all Telecommunicators and Call Takers, at no cost to the employee.

ARTICLE XXVI
Job Classifications

Section 1. Position Requirements

In all Position Classification Specifications covered by this Agreement where the word "desirable" does not precede the word "requirements" such shall be added so as to read "desirable requirements," so as to provide for equivalencies, except where statutory standards, accreditation standards, or bona fide standards as

defined by the parties in a Memorandum of Understanding, do not allow such.

Section 2. Assignment Within Classification Specifications

The phrase "performs other duties as required or assigned" under "Illustrative Examples of Work" in the Position Classification Specifications covered by this Agreement shall be changed to read as follows:

"performs other duties as required or assigned which are reasonably within the scope of the duties enumerated above."

Section 3. Job Descriptions

The Employer agrees, upon request, to provide for a review of an employee's job description and specification by the employee and/or the Union at the local level.

After such review, the Employer further agrees, upon request, to provide the employee and the Union with a copy of the employee's job description (CMS-104).

When changes are made in an employee's job description, a copy of the revised job description shall be provided to the employee.

Section 4. Changes in the Position Requirements

When requirements for a class are revised and the duties and responsibilities of positions comprising the class remain essentially unchanged, incumbents in these positions who qualified under the previous requirements for the class shall be considered qualified.

Any proposed changes in job specifications shall be provided to the Union at least twenty-one (21) days

prior to their submission to the Civil Service Commission.

Section 5. Position Classification

The Employer may, subject to the provisions of Article XIV, Temporary Assignment, temporarily assign an employee to perform the duties of another position classification. When the time limits set forth in Article XIV expire, the Employer may terminate the duties or establish a new position at the appropriate classification.

In cases when the new position is established at an equal rated or higher classification than that of the temporarily assigned employee, the position is declared vacant, and it shall be posted subject to the provisions of Article XIX, Filling of Vacancies. If the employee who has been temporarily assigned is not selected for the posted vacancy, the employee shall have the right to be placed in a vacant position equal to his/her current classification, if the employee meets the minimum training and experience requirements of the position including bona fide skills, if any, required for the position pursuant to this Agreement. If no such vacancy exists within the employee's official organizational unit, the employee shall displace the least senior employee in his/her classification within such unit and the least senior employee shall be subject to the provisions of Article XX, Layoff. If the temporarily assigned employee is the least senior within the employee's classification, the employee shall be subject to the provisions of Article XX, Layoff.

If the employee who has been temporarily assigned is selected for the posted vacancy, the employee shall have his/her creditable service date adjusted to reflect

the first date on which he/she was temporarily assigned without interruption.

In cases when the new position is established at a classification lower than that of the temporarily assigned employee, the least senior employee in the same classification as the temporarily assigned employee within the official organizational unit shall be assigned to the lower level position, and the temporarily assigned employee shall be transferred to the least senior employee's former position, if there are not sufficient vacancies in the employee's original classification.

In all cases when the employee is moving to an equal or lower level position, such actions shall not be subject to the provisions of Article XIX, Filling of Vacancies. Should the employee elect not to accept any of these options or none of the options exist, the employee shall be laid off, subject to the provisions of Article XX, Layoff. When an employee is placed in a lower level position, the employee's rate of pay in the original position shall be frozen for 12 months from the effective date of the placement in the lower level position.

The above conditions do not apply to the implementation of classification studies.

Section 6. New Classifications and Reclassification

Where classification studies are conducted to evaluate whether a new position classification/series should be established, and such is established, the incumbents in an existing position classification whose duties are encompassed within the new or another existing position classification specification or training provided therefore, shall be reclassified accordingly. Thereafter, permanent vacancies in the new position

classification shall be posted as permanent vacancies. Additionally, classification study procedures may be used to retitle or reclassify an entire position classification/series wherein the job duties and responsibilities of such position classification/series have changed and increased over time.

Section 7. Reallocation and Investigation Procedures

The reallocation and investigation procedures shall not be used by the Employer to fill permanent vacancies occurring in position classifications within the bargaining unit.

Section 8. New Classifications

The Employer shall promptly notify the Union of its decision to propose to the Civil Service Commission any and all new classifications at least twenty-one (21) days prior to making its recommendation to the Commission. If the parties agree that the proposed new classification is a successor title to a classification covered by this Agreement, with no substantial change in duties, the Union and the Employer shall file a stipulated unit clarification petition with the Illinois State Labor Relations Board to ensure that the new classification becomes a part of this Agreement.

If the proposed new classification contains a significant part of the work now done by any of the classifications in these bargaining units, or whose functions or community of interests are similar to those bargaining units, the Union will notify the Employer within thirty (30) days of its receipt of the Employer's notice, and the parties will then meet within fifteen (15) days of such notice to review the position classification. If the Union and the Employer are able to reach agreement on the inclusion of the position classification in a unit, they shall submit a

stipulated unit clarification petition to the Illinois State Labor Relations Board.

Once the inclusion of the proposed position classification has been found appropriate by the Illinois State Labor Relations Board, the parties shall negotiate as to the proper pay grade for the classification and its appropriate series and series placement. If no agreement is reached after a period of negotiations which shall not exceed 90 days from the date of the Illinois State Labor Relations Board decision, the Union may, appeal the position classification as containing substantially the same duties as an existing position classification, the pay grade and/or the appropriate series to arbitration pursuant to the Memorandum of Understanding entitled "Special Grievances". The arbitrator shall determine the reasonableness of the proposed salary grade in relationship to:

a) The job content and responsibilities attached thereto in comparison with the job content and responsibilities of other position classifications in the classification series and in the bargaining unit;

b) Like positions with similar job content and responsibilities within the labor market generally;

c) Significant differences in working conditions to comparable position classifications;

d) The equitable relationship between classifications in and out of the bargaining unit.

The pay grade originally assigned by the Employer shall remain in effect pending the arbitrator's decision.

If the decision of the arbitrator is to increase the pay grade of the position classification, such rate change

shall be applied retroactive to the date of its installation.

Upon installation of the new position classification, the filling of such position classification shall be in accordance with the posting and bidding procedures of this Agreement.

ARTICLE XXVII
Evaluations

Section 1. Informal Conferences

The Union and the Employer encourage periodic informal evaluation conferences between the employee and his/her supervisor to discuss work performance, job satisfaction, work-related problems and the work environment. If work performance problems are identified, the supervisor shall offer constructive suggestions and shall attempt to aid the employee in resolving the problem.

Section 2. Written Evaluations

It is the intent of the Employer to conduct ongoing evaluations as provided in Section 1 above. However, the Employer shall prepare two (2) written evaluations on employees who are serving an original probation or a probation as a result of promotion – one evaluation at the midpoint of the probationary period and one two (2) weeks prior to the end point of such probation. In addition, the Employer may prepare periodic evaluations of employees.

Except where present practice provides otherwise, written evaluations shall be prepared by the Employee's supervisor who is outside the bargaining unit and/or an employee in the same or higher position classification which has historically performed such evaluation who either has first-hand knowledge of the

employee's work or has discussed and received recommendations from someone who does. The evaluation shall be limited to the employee's performance of the duties assigned and factors related thereto. The evaluation shall be discussed with the employee, and the employee shall be given a copy immediately after completion and shall sign the evaluation as recognition of having read it. Such signature shall not constitute agreement with the evaluation. Upon an employee's request, the notation of discipline shall be corrected or amended in the performance evaluation, based upon any applicable grievance resolution. If a notation of discipline is included in a performance evaluation, which may be a copy of the actual discipline, it shall only be included on a separate sheet of paper and shall be removed consistent with the terms set forth in Article IX, Section 7.

The performance evaluation may be adjusted by upper levels of supervision with the understanding that such changes shall be discussed with the employee and the employee shall be given the opportunity to not concur and/or comment on the appropriate section of the evaluation form regarding the changes and shall be given a copy of the revised evaluation.

ARTICLE XXVIII
Employee Development and Training

Section 1. Policy

The Employer and the Union recognize the need for the training and development of employees in order that services are efficiently and effectively provided and employees are afforded the opportunity to develop their skills and potential. In recognition of such principle the Employer shall provide within a

reasonable time frame employees with appropriate training with respect to current procedures, forms, methods, techniques, materials and equipment normally used in such employees' work assignments and periodic changes therein, including where available and relevant to such work, procedural manuals. The Employer hereby subscribes to the principles of career ladders and promotions within its organization.

Agency practices of allowing employees who hold a job required professional certificate to attend continuing education courses or seminars, without loss of pay, to maintain such certificates shall continue.

Section 2. Courses of Instruction

Employees will be entitled to reimbursement subject to the availability of these funds for tuition expenses for academic courses, seminars, workshops and conferences that are determined by the Employer to be job related. All such reimbursements are subject to verification by the employee and subsequent approval from the Employer. Employees whose job requires a license or certification which requires them to attend classes or take courses shall have the cost of such classes and coursework covered by the available Upward Mobility funds consistent with guidelines established by the Upward Mobility Advisory Committee.

Current agency practice with respect to the tuition reimbursement policies and taking of paid time off for courses of instruction shall remain in full force and effect.

The employing agency agrees to pay up to $300 for ARDC and Bar Association fees for Technical Advisors and Hearing Referees. All bargaining unit attorneys and educators shall as necessary attend required

continuing education and/or certification classes or courses of instruction without loss of pay.

Section 3. Trainee Programs

The Employer agrees that its trainee programs shall be implemented and administered in accordance with Personnel Rules 302.170 and 302.180. Employees shall receive first consideration for entry into trainee programs prior to new hires. However, nothing in this Section precludes the Employer from filling trainee positions with new hires.

Section 4. Opportunities for the Disabled

Wherever possible, the Employer will allow disabled employees to use alternative techniques, aids and appliances, in order that such employees may fully use their skills as necessary for their duties. The provision of such aids and appliances or reimbursement therefore shall be subject to local level supplemental negotiations.

Section 5. Training Information

The Employer reserves the right to establish a file for training purposes. The employee shall be given notice of such file and shall have the right to review the contents, subject to reasonable advance notice.

Section 6. Grades

In all cases where changes are made to a position classification that invalidate an employee's grade, the Employer shall notify all affected employees of their need to submit new promotional applications in order to obtain a new grade. If changes are made to the testing requirements that would invalidate an employee's grade upon expiration of the grade, the Employer shall notify all affected employees and the Union of the need to submit new applications in order

to obtain a new grade and the reason(s) why the grade would be invalidated. Promotional grades shall be valid for a period of six (6) years from the date of issuance, excluding classifications with recency requirements. An employee who promotes and then subsequently returns to his/her previously certified position during the promotional probationary period shall have all previously held grades restored upon written request.

ARTICLE XXIX
Sub-Contracting

Section 1. Policy

A. RC-6, 9, 10, 14, 28, 42, 62 and 63.

It is the policy of the Employer to make every reasonable effort to utilize its employees to perform work they are qualified to do, and to that end, the Employer will avoid, insofar as is practicable, the subcontracting of work performed by employees in the bargaining unit. However, the Employer reserves the right to contract out any work it deems necessary or desirable because of greater efficiency, economy, or other related factors. The Employer may not use individual personal service contracts deemed illegal by the Civil Service Commission.

Section 2. Application

The Employer agrees that upon formal consideration to subcontract any work performed by bargaining unit employees, it shall:

a) Provide reasonable advance notice, which shall not be less than forty-five (45) days, except in emergency situations, prior to the issuance of a request for services, in writing, to the Union. Such notices shall not be required for renewal of sub-

contracts, if the Union has been notified of a previous contract for such work, unless there is a substantial modification to the scope of work or cost in the renewal of the sub-contract.

b) Meet with the Union prior to making a decision to contract for the purpose of discussing the reasons for its proposal. During this discussion, the Union will be provided all reasonably available and substantially pertinent information in conformance with all applicable laws and be granted reasonable requested opportunities to meet with the Agency for the purpose of reviewing the Employer's contemplated action and proposing alternatives to the contemplated sub-contract. In the event the Union does not seek to schedule a meeting or does not respond within thirty (30) days, the Employer's obligations under this paragraph shall be considered met.

c) The Employer shall provide a cost comparison of the expenses the Employer projects it will incur over the term of the contract if the Employer continued to perform such services using bargaining unit employees compared to the expenses the Employer projects if a third party performed such services. Such comparison shall include cost projections for 3 years, or the length of the contract, whichever is less.

d) If the Employer decides to enter into the subcontract, it will inform the Union of its decision. Such notification is not necessary for renewal of contracts, if the Union has been notified of a previous contract for such work, unless there is a substantial modification to the scope of work or cost in the renewal of the subcontract.

e) When contemplated sub-contracting of bargaining unit work would subject an employee to layoff, the Employer shall provide the opportunity to the affected employees to fill existing equal rated permanent vacancies at the work location, other work locations of the agency, or other agencies, in that order. If the above placement in the employee's agency cannot be accomplished without training, the Agency will provide an opportunity for in-service training to employees who possess the qualifications and ability for the vacancies except for that which they might lack and might be provided by in-service training. Such training shall be consistent with the agency's budget, program goals, statutory directives and related factors. The parties agree to meet prior to the sub-contracting for the purpose of attempting to reach agreement over any necessary changes in the Filling of Vacancies procedure of the Agreement in an effort to help facilitate this provision.

Section 3. Successors

Prior to the sub-contracting of work, the Employer will make a reasonable effort with the contractor to insure that employees subject to layoff because of sub-contracting secure employment with the contractor. The Employer, the Union, and the proposed sub-contractor shall meet to discuss the employment of employees subject to layoff.

ARTICLE XXX
Injury in Line of Duty

Section 1. Department of Corrections, Department of Juvenile Justice, Veterans' Affairs, and Human Services, Office of Mental Health and Developmental Disabilities, and Residential Schools within the Office of Rehabilitation Services

Whenever any employee of the Department of Corrections, Department of Juvenile Justice, Veterans' Affairs, or the Department of Human Services, Office of Mental Health and Developmental Disabilities, and Residential Schools within the Office of Rehabilitation Services, employed on a full-time or part-time basis suffers any injury in the line of duty as a direct or indirect result of resident or student violence which causes him/her to be unable to perform his/her duties, such employee shall continue to be paid on the same basis as he/she was paid before the injury, with no deduction from sick leave credits, compensatory time or overtime accumulated, vacation, or service credit with a public employees pension fund during the time he/she is unable to perform his/her duties due to the result of the injury but no longer than one (1) year in relation to the same injury and all applicable benefits shall continue during such period as if he/she were at work. Any salary compensation due from Workmen's Compensation or any salary due from any type of insurance which may be carried by the Employer shall revert to the Employer during the time for which continuing compensation is paid. This Section shall be extended to any other bargaining unit employee upon enactment of legislation to that effect.

After the one year period stated above or if the employee was not injured in the line of duty, the

provisions of Section 20 of the Leave of Absence Article shall apply.

Section 2. Department of Children and Family Services

This Article shall also apply to any employee of the Department of Children and Family Services, employed on a full-time or part-time basis, who suffers an injury as a direct or indirect result of violence perpetrated by a client, or any individual who is a member of the family or household that is under investigation or receiving follow-up services, when such employee is in the course of conducting the investigation or providing the services when such injury causes the employee to be unable to perform his/her duties.

Section 3. Insurance Payments

An employee who suffers an injury or illness pursuant to this Article who would otherwise later qualify for Employer insurance payments under Article XXIII, Section 9 n) shall have such payments made on his/her behalf.

ARTICLE XXXI
Miscellaneous Provisions

Section 1. Union/Agency Agreements on Workloads

The parties agree that the Employer has the right to establish reasonable workload standards and productivity levels. In agencies where such standards of productivity measurements exist, they shall be reduced to writing, with copies to the employees and the Union. Changes in workload standards or productivity measurements, or the creation of such, shall be discussed with the Union prior to implementation. Failure to meet workload standards and productivity

levels which have been established in accordance with this Section may subject the employee to Employer action as provided in Article IX. Nothing in this section shall preclude a supervisor from prioritizing work or addressing work performance deficiencies.

Section 2. Wage Assignments and Garnishments

The Employer shall not impose disciplinary action against an employee for any wage assignments or garnishments. Where the Employer seeks to recoup overpayment to employees, it shall be at no greater rate than allowed under the Garnishment Laws and subject to the Rules and Regulations of the Office of the Comptroller.

Section 3. Affirmative Action

The Union has the right to appoint a representative on all Affirmative Action Committees.

Section 4. Notification of Leave Balances

On a date prior to July 1 of each year, all employees shall be given a statement of all leave balances (sick leave, vacation, personal days, accumulated and compensatory time). Where current practice provides for more frequent notification of such balances, it shall prevail.

Section 5. Printing of the Agreement

The Employer shall have this contract printed by a Union Printer if such bids are no more than 10% higher than a non-union supplier's bid or unless no bidders whose employees are represented by a union respond to the bid notice, in booklet form with agreed upon Memoranda of Understanding and covered employees shall be provided a copy of such. The Union shall receive extra copies as they may require and shall pay for the cost of their copies.

Section 6. Travel (RC-42 and Site Technicians I and II)

Employees will not be required to furnish their own vehicles for job functions necessitating specialized vehicles, and normally will not be required to furnish their own vehicles for other job functions for which the Employer currently provides vehicles. Travel Control Board rules shall govern the use of personal vehicles and per diems.

Section 7. Educators' Fringe Benefits (RC-63)

The parties agree that past practices and policies of the Employer relating to sick leave, and leave for personal business, as negotiated for Educators working an academic (school year) schedule, shall continue.

Section 8. Commercial Drivers License

The Employer will reimburse employees required to possess a Commercial Drivers License for the cost of such license.

Section 9. Public Service Quality Involvement Committees

Employee involvement committees which seek to improve the quality of service provided to the public and/or the quality of work life for employees may be established in any State agency by mutual agreement of the parties. Each party shall determine its own representatives to serve on such committee. Union designated bargaining unit employees shall participate in such committees without loss of pay. No such committees may take action on matters pertaining to wages, hours or conditions of employment.

Section 10. Reasonable Accommodations Under the Americans with Disabilities Act

In the event a permanently disabled bargaining unit employee seeks a reasonable accommodation under the Americans with Disabilities Act, the Union has the right to discuss with the Employer issues regarding such proposed reasonable accommodations and the impact on specific provisions of the collective bargaining agreement. However, such discussions shall not impede the Employer from fulfilling its obligations under the Act. Only those reasonable accommodations which conflict with the collective bargaining agreement shall require the written consent of the Union.

Section 11. Supplementary Agreements

All supplemental agreements or memorandums of understanding, or other agreements shall be considered tentative agreements until approved by Central Management Services and the Union.

No supplementary agreement or Memorandum of Understanding or Agreement may be entered into that conflicts with the Master Contract without the approval of CMS and the Union.

Section 12. Disposition of Work During Absences

The parties may by mutual agreement negotiate in agency supplementals the disposition of work in an employee's absence. In any event, an employee's authorized absence shall not be detrimental in any way to the employee's record, nor will the employee be disciplined or counseled for work unable to be completed based on the employee's authorized absence.

Section 13. Docking

The amount of salary deducted from an employee whose daily salary is docked shall be pursuant to 80 Il. Admin. Code 310.70 (c).

Section 14. Fitness for Duty

In accordance with current practices, when the Employer has reason to suspect that an employee is not fit for duty and has requested a fitness for duty evaluation which determines the employee is unfit for duty and the employee's physician certifies the employee is fit for duty, the Employer may rely upon the decision of the impartial physician as to the employee's fitness for duty. Such examination shall be paid for by the Employer.

Section 15. Payroll Errors

When errors are made which result in a significant reduction in an employee's pay, the Employer, when possible, will submit the required documentation to the Comptroller's Office within forty-eight (48) hours after the error is documented to and verified by payroll.

Section 16. Calculation of BackPay

When an employee is off work without pay for any period, and becomes eligible for backpay, and there is a requirement that the backpay be offset by income received, the following shall apply:

a) Where the employee received unemployment compensation for any period for which the employee becomes eligible for backpay, the Employer shall make a backpay check payable jointly to the employee and the Illinois Department of Employment Security for such time period which the employee received benefits pursuant to the Unemployment Insurance Act. A

separate check shall be issued to the employee for the time period when there is not unemployment compensation, but backpay is awarded.

b) Only interim earnings based upon the same number of hours as would have been available at the employee's State job, based upon the employee's regular schedule, may be offset against gross backpay.

c) The burden of proof, to submit to the Employer the exact dollar amount and hours of outside wages earned during the dates of the backpay claim, lies with the employee. If the specific information is not submitted, the Employer shall deduct all outside wages earned during the period of the backpay claim.

ARTICLE XXXII
Wages and Other Pay Provisions

Section 1. Wage Schedule

The negotiated pay rates for position classifications covered by this Agreement are set forth in Schedule A and shall become the rates of pay applicable to such position classifications.

Section 2. Promotions/Voluntary Reductions

When an employee is promoted, he/she shall be paid at the lowest step rate in the new position classification which represents at least a full step increase in his/her former classification. Longevity pay, as provided in Article XXXII, Section 6(c), shall be included in an employee's rate of pay when determining whether a step represents a full step increase. If a promoted employee's creditable service date is within 90 days of the effective date of the promotion, the Employer shall also include the projected service increase in the computation of the promotional salary increase.

The salary of an employee who voluntarily requests a reduction during a probationary period following a promotion will be reduced to the same salary step in the lower salary range from which the employee was promoted and the employee's previous creditable service date will be restored.

An employee who takes a position in a trainee classification which represents a reduction shall have his/her salary red-circled at the rate of the former classification.

Section 3. Shift Differential

Employees shall be paid a shift differential of 80 cents per hour in addition to their base salary rate for all hours worked if their normal work schedule for that day provides that they are scheduled to work and they work half or more of such work hours before 7 a.m. or after 3 p.m. Such payment shall be for all paid time.

Incumbents who currently receive a percentage shift differential providing more than the cents per hour indicated above based on the base rate of pay prior to the effective date hereof shall have such percentage converted to the cents per hour equivalent rounded to the nearest cent and shall continue to receive such higher cents per hour rate.

This Section shall not apply to employees who because of "flex-time" scheduling made at their request are scheduled and work hours which would otherwise qualify them for premium pay hereunder.

Section 4. Steps

Employees shall receive a step increase to the next step upon satisfactory completion of twelve months creditable service.

Intermittent employees shall receive a step increase to the next step, upon satisfactory completion of the applicable number of hours in the standard work year of creditable service.

Educators who submit the appropriate documentation to the Employer which validates that the employee has attained the necessary requirements for a change in lanes shall be placed in the new lane in the next pay period during which the employee works.

Effective upon the date of signature of the Agreement, Step 1a, 1b, and 1c shall be implemented for all employees hired on or after the date of signature of the Agreement with a 3% step differential.

Section 5. Severance Pay

RC-6, 9, 10, 14, 28, 42, 62 and 63

Where a facility closes permanently or a separately appropriated and funded program is permanently terminated, employees affected thereby with two (2) or more years seniority and on the agency's payroll at the time of such closure or termination, or who were previously laid off as a direct result of such closure or termination, not offered another bargaining unit position as defined below within sixty (60) days of such closure or termination and within fifty (50) miles of the employee's work location, shall be offered severance pay in the amount of one (1) month's compensation at their monthly rate of pay in effect at the time of such closure or termination. Provided, however, that an employee who elects to remain on the layoff list for a period in excess of six (6) months, or who obtains another bargaining unit position, or who refuses an appropriate position offered by the Employer within his/her position classification series (or if his/her classification is the only one in its series, within a

comparable classification) shall forfeit any severance pay which is due under this Section. If an employee accepts severance pay he/she shall be considered terminated under Article XVIII, Section 3.

Section 6. General Increases

a) Effective July 1, 2013, the pay rates for all bargaining unit classifications and steps shall be increased by 2.00%, which rates are set out in Schedule A.

b) Effective July 1, 2014, the pay rates for all bargaining unit classifications and steps shall be increased by 2.00%, which rates are set out in Schedule A.

c) Effective January 1, 2002, the Step 8 rate shall be increased by $25.00 per month for those employees who attain ten (10) years of continuous service and have three (3) or more years of creditable service on Step 7 in the same or higher pay grade on or before January 1, 2002. For those employees who attain fifteen (15) years of continuous service and have three (3) or more years of creditable service on Step 7 in the same or higher pay grade on or before January 1, 2002, the Step 8 rate shall be increased by $50.00 per month.

For employees not eligible for longevity pay on or before January 1, 2002, the Step 8 rate shall be increased by $25.00 per month for those employees who attain ten (10) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade. For those employees who attain fifteen (15) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade, the Step 8 rate shall be increased by $50.00 per month.

Effective July 1, 2010, the Step 8 rate shall be increased by $50.00 per month for those employees who attain ten (10) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2010. For those employees who attain fifteen (15) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2010, the Step 8 rate shall be increased by $75.00 per month.

Effective July 1, 2013, the Step 8 rate shall be increased by $25.00 per month to $75.00 a month for those employees who attain ten (10) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2013. For those employees who attain fifteen (15) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2013, the Step 8 rate shall be increased by $25.00 per month to $100.00 a month.

d) Employees whose salaries are above the maximum Step rate will continue to receive all applicable general increases and any other adjustments (except [c], above) as provided for in this Agreement. For these employees, the increase provided for in (c) above shall be limited to the amount that would increase the employee's salary to the amount that is equal to that of an employee on the maximum Step rate with the same number of years of continuous and creditable service.

e) Notwithstanding anything above, employees receiving longevity pay shall continue to receive such pay as long as they remain in the same or successor

classification as a result of a reclassification or reevaluation.

Section 7. Step 8

a) Effective January 1, 2002, a Step 8 shall be established for each pay grade at a pay rate 1% higher than the Step 7 rate in each pay grade.

b) Effective January 1, 2003, the Step 8 rate for each pay grade shall be increased to a pay rate 2% higher than the Step 7 rate in each pay grade.

c) Effective January 1, 2004, the Step 8 rate shall be increased to a pay rate 3% higher than the Step 7 rate in each pay grade.

d) Effective July 1, 2007, the Step 8 rate shall be increased to a pay rate 4% higher than the Step 7 rate in each pay grade.

e) Effective January 1, 2002, employees with twelve (12) months or more of creditable service on Step 7 on or before that date shall be placed on Step 8.

f) Employees who are eligible for longevity pay pursuant to Section 6 (c) of this Article on or before January 1, 2002, shall continue to receive longevity pay after being placed on Step 8 while they remain in the same or lower pay grade.

g) Employees not eligible for longevity pay pursuant to Section 6 (c) of this Article on or before the date they are placed on Step 8 shall begin to receive longevity pay after three (3) years or more of creditable service on Step 8.

Section 8. Classifications/Upgrades

In the event the parties negotiate salary upgrades, placement shall be handled as follows:

Incumbent employees shall be placed on the step nearest to but greater than their current step upon the effective date as set forth above.

If such adjustment results in less than a full-step increase, the incumbent employees shall have no change in their creditable service date.

If such adjustment results in more than a full-step increase, the incumbent employee shall have a new creditable service date of July 1 in the year in which the upgrades are effective.

All upgrades under this section are reflected in the salary ranges set forth in Schedule A.

Section 9. Special Rates

Pending a final determination of the rates of pay for a new classification where some jobs go from the merit compensation system into the bargaining unit, on the effective date an employee's salary shall be placed at the salary step closest to but no less than the current salary. If the salary exceeds Step 8, it shall be red-circled at its current rate and shall receive contractual adjustments during the interim pending final determination of rates.

Where an individual position is returned to the bargaining unit into an existing classification, the employee's salary shall be treated as provided above.

All standard transactions (promotions, reallocation, etc.) from merit classes to unit classes are handled under the applicable Pay Plan and contract provisions.

Section 10. Bi-lingual Pay

Effective July 1, 2000, positions whose job descriptions require the use of sign language, or which require the employee to be bi-lingual, or which require

the employee to use Braille, shall receive $100.00 per month or 5.0% of their monthly base salary whichever is greater in addition to the rates of pay set forth in this Agreement.

Section 11. Court Reporters

Court Reporters and Industrial Commission Reporters shall receive the same schedule of charges for transcripts of evidence and proceedings as the Court Reporters whose charges are adopted by the Illinois Supreme Court.

Section 12. Department of Human Services and Department of Veterans' Affairs

Licensed Practical Nurses who are directed to perform additional lead worker and/or program duties in the absence of a Registered Nurse shall receive 5.0% temporary assignment pay effective July 1, 1994 and an additional 5.0% July 1, 1995 for those hours so assigned.

Section 13. Maximum Security

All employees with seven or more years of continuous service with the Department of Corrections and Juvenile Justice who are currently employed at Department of Corrections or Juvenile Justice maximum security institutions shall be placed on the maximum security schedule as long as they remain employees at a maximum security facility.

Section 14. Academic Year Educators

Beginning with the 2013-2014 school year, steps and pay rates for Academic Year Educators at the Illinois School for the Visually Impaired and Illinois Center for Rehabilitation and Education Roosevelt shall be increased in accordance with Schedule A.

Section 15. Direct Deposit

Effective July 1, 2004, all paychecks for new hires will be delivered via direct deposit.

ARTICLE XXXIII
No Strike or Lockout

Section 1. No Strike

During the term of this Agreement there shall be no strikes, work stoppages or slow downs. No officer or representative of the Union shall authorize, institute, instigate, aid or condone any such activities.

Section 2. Employer/Employee Rights

The Employer has the right to discipline, up to and including discharge, its employees for violating the provisions of this Article.

Section 3. No Lockout

No lockout of employees shall be instituted by the Employer or their representatives during the term of this Agreement.

ARTICLE XXXIV
Authority of the Contract

Section 1. Partial Invalidity

Should any part of this Agreement or any provisions contained herein be Judicially determined to be contrary to law, such invalidation of such part or provision shall not invalidate the remaining portions hereof and they shall remain in full force and effect. The parties shall attempt to renegotiate the invalidated part or provisions. The parties recognize that the provisions of this contract cannot supersede law.

Section 2. Effect of Department of Central Management Services Rules and Pay Plan

Unless specifically covered by this Agreement, the Rules of the Department of Central Management Services and its Pay Plan shall control. However, the parties agree that the provisions of this Agreement shall supersede any provisions of the Rules and Pay Plan of the Director of Central Management Services relating to any subjects of collective bargaining contained herein when the provisions of such Rules or Pay Plan differ with this Agreement. In the event the Director of Central Management Services proposes to change an existing Rule or Pay Plan provision of the Department of Central Management Services, and such Rule or Pay Plan provision does not cover a matter contained in this Agreement, the Union shall be notified of such proposed change and shall have a right to discuss and negotiate over the impact on wages, hours, and conditions of employment, if any, of the change prior to its effective date.

Section 3. Increase or Decrease of Benefits

In the event the Director of Central Management Services unilaterally grants an increase in fringe benefits to every and all non-AFSCME bargaining unit employees subject to the Personnel Code, such increase shall be made applicable to the employees covered by this Agreement. Reduction in benefits, however, shall not be made applicable, and the provisions of this Agreement shall apply.

In the event the Employer voluntarily agrees to give any other bargaining unit under the jurisdiction of the Governor whose members are covered by the Illinois Pension Code or the State's Group Health and Life Plan a general wage increase greater than the

increases provided for in this Agreement or gives more favorable treatment for insurance premiums and/or health care plan design, excluding unions opting out of the State's Group Health and Life Plan, in a contract that is negotiated after the effective date of this Agreement and expires on or before June 30, 2015, then such increases and/or favorable insurance treatment shall be afforded to the employees covered by this agreement.

Any employee who is not paid the negotiated wage rate as scheduled in this Agreement shall not be charged any increased cost for health insurance premiums, co-payments, or deductibles provided for in the Agreement during the period he/she is not being paid the negotiated rate established in the wage and salary schedule.

Section 4. Waiver

The parties acknowledge that during the negotiation which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter within the area of collective bargaining as defined in P.A. 83-1012 and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

However, the Employer agrees that during the period of this Agreement, it shall not unilaterally change any bona fide past practices and policies with respect to salaries, hours, conditions of employment, and fringe benefits enjoyed by members of the bargaining units without prior consultation and negotiations with the Union. Where past practice conflicts with the express terms of the contract, the contract shall prevail. In order to qualify as a bona fide

past practice, such practice must be (1) unequivocal, (2) clearly enunciated and acted upon, and (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.

ARTICLE XXXV
Termination

This Agreement shall be effective July 1, 2012, and shall continue in full force and effect until midnight June 30, 2015, and thereafter from year to year, unless not more than 180 days, but not less than 60 days prior to June 30, 2015, or any subsequent June 30, either party gives written notice to the other of its intention to amend or terminate this Agreement.

GENERAL TEAMSTERS/PROFESSIONAL & TECHNICAL EMPLOYEES

LOCAL UNION No, 916

AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA. GENERAL PRESIDENT

NOTICE TO PUBLIC FAIR SHARE EMPLOYEES

INTRODUCTION

General Teamsters/Professional & Technical Employees Local Union 916, is the exclusive bargaining Agent for employees in your bargaining unit; you are a Non-Union Member of the bargaining unit also known as (Fair Share Member). The Union is allowed to charge you the proportionate share of the costs incurred by the Union as the exclusive representative of the employees in dealing with the Employer,

Union Members are charged two and a half (2 1/2) times their hourly rate of pay rounded to the nearest whole dollar as union dues. Non-union members of the bargaining unit are charged 78.78% of the full member rate as their fair share of the cost of the Union's representation of all unit employees. This fair share charge covers the cost of activities incurred by the Union as the exclusive representative of the employees dealing with the employer. These amounts have been verified by independent auditors as the previous years' expenditures in these categories, Please see attached insert from Kerber, Eck & Braeckel LLP Certified Public Accountants for the union and details on the Fair Share Fee Calculations. These expenditures represent 78.78% of the amount paid by Union members.

The Union will ask the employer to deduct this amount monthly during the term of the current collective bargaining agreement between the Union and the Employer signed and in effect from July 1, 2015 to June 30, 2019.

3361 TEAMSTER WAY
Springfield IL 62707
(217) 522-7932
FAX (217) 522-9492
www.teamsters916.org

Executive Board

Tony Barer,
President

David Rush,
Vice President

Tom Clatfelter,
Secretary Treasurer

Jp Fyans,
Recording Secretary

Leo Carroll,
Trustee

Jim Franklin,
Trustee

Dave Shafer,
Trustee

Staff

Tony Barr.
Directing Business Agent

Leo Carroll,
Executive Assistant

Tom Clatfelter,
Directing Business Agent

David Rush,
Business Agent

Larry Larson,
Business Agent

Dave Robinson,
Business Agent

JP Fyans,
Legal Counsel.

Trevor J. Clatfelter,
Director
Governmental Affairs

Teresa Hammer,
Administrative Assistant/Titan Operator

Lisa Howard,
Administrative Assistant/Health & Welfare And Pension

Dody Filipiak,
Bookkeeper

STATEMENT OF EXPENSES AND ALLOCATION OF EXPENSES BETWEEN CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES
PUBLIC SECTOR
Teamsters Local 916
Proud to be American. Proud to be Teamsters.
December 31, 2014
General Teamsters/Professional & Technical Employees Local Union 916

	Total Expenses	Chargeable Expenses	Non-Chargeable Expenses	Notes
Personnel costs	$2,131,846	$1,907,683	$224,163	Cl
Per capita tax	987,368	647,549	339,819	C3
Donations	101,590	-	101,590	C5
Contract labor	47,950	47,950	-	Co
Professional fees	86,449	86,449	-	CO
DRIVE Fund Expenses	47,573	-	47,573	C5
Occupancy	45,422	38,609	6,813	C2 -
Education and publicity	29,184	9,489	19,695C6	C2
Protech expenses	26,230	26,230	-	C6
Member benefits	38,714	-	38,714	C5
Depreciation	100,198	85,168	15,030	C2
Meetings and travel	106,427	90,288	16,139	C4
Insurance	40,905	34,769	6,136	C2
Repairs and maintenance	51,100	43,435	7,665	C2
Office and administrative expense	99,516	86,665	12,851	C2
Total	$3,940,472	$3,104,284	$836,188	
Chargeable/ Non-chargeable percentage		78.78%	21.22%	

The accompanying notes are an integral part of this statement.

TEAMSTERS LOCAL 916

NOTICE TO ALL PUBLIC SECTOR NON-MEMBER FAIR SHARE FEE PAYERS

This Notice is being provided to all individuals who pay fair share fees to the International Brotherhood of Teamsters ("Teamsters") Local 916 under a collective bargaining agreement between the Teamsters and your employer. Such Notice is required by the decision of the United States Supreme Court in Chicago Teachers Union Local 1 AFL-CIO, et at v. Hudson, et al and Illinois Law. PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION AND PROCEDURES REGARDING YOUR LEGAL RIGHTS.

TEAMSTER LOCAL 916 FAIR SHARE FEE

As a nonmember fair share fee payer, you are being charged a fair share fee which is equal to your proportionate share of the cost of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment. This charge is authorized by the Illinois Public Labor Relations Act and the Illinois Educational Labor Relations Act. The categories of expenses which are chargeable to fair share fee payers, the categories of nonchargeable expenses and the actual calculation of chargeable and nonchargeable expenses of Teamsters Local 916 are set forth below. Also included in this Notice are descriptions of the procedures by which a nonmember fair share fee payer can challenge the foregoing calculation and the amount of the fair share fee.

CATEGORIES OF CHARGEABLE AND NON-CHARGEABLE EXPENSES

The fair share fee includes your pro rata share of the costs of the following activities of Teamsters international, Teamsters Joint Council 25 and Teamsters Local 916:

1. Gathering information in preparation for the negotiation of collective bargaining agreements.

2. Gathering information from employees concerning collective bargaining positions.

3. Negotiating collective bargaining agreements.

4. Administration of ballot procedures on the ratification of negotiated agreements.

5. The public advertising of Teamsters' positions on the negotiations, ratification or implementation of collective bargaining agreements.

6. Lobbying for the negotiation, ratification or implementation of a collective bargaining agreement.

7. Adjusting grievances pursuant to the provisions of collective bargaining agreements, enforcing collective bargaining agreements and representing employees in proceedings under civil service laws or regulations.

8. Purchasing books, reports and advance sheets used in negotiating and administering collective bargaining agreements, and processing grievances.

9. Paying technicians in labor law, economics and other subjects for services used in negotiating and administering collective bargaining agreements, and processing grievances.

10. Defending against efforts by other unions or organizing committees to gain representation rights In units represented by Teamsters.

11. Membership meetings and conventions held at least in part to determine the position of employees on collective bargaining issues, contract administration and other matters affecting wages, hours and working conditions, including costs of sending representatives to such meetings and conventions.

12. Internal communications which concern collective bargaining issues, contract administration, public employment generally, employee development, unemployment, job opportunities, award programs and other matters affecting wages, hours and working conditions.

13. Impasse procedures, including fact-finding, mediation, arbitration, strikes, slow-downs and work stoppages, over provisions of collective bargaining agreements and the administration thereof, so long as they are legal under state law. These costs may include preparation for strikes, slow downs, and work stoppages regardless of their legality under state law, so long as no illegal conduct actually occurs.

14. The prosecution or defense of arbitration, litigation or charges to obtain ratification, interpretation, Implementation or enforcement of collective bargaining agreements and any other litigation before agencies or In the courts which concern bargaining unit employees which is normally conducted by an exclusive representative.

In addition, your fair share fee includes your pro rata share of the expense associated with the following activities which are chargeable to the extent that they are germane to collective bargaining activity, are

justified by the government's vital policy interest in labor peace and avoiding free-riders, and do not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop.

15. Services provided by a parent organization to other bargaining units, which are provided from a pool of resources available to all units, and may ultimately inure to the benefit of the members of the local bargaining unit.

16. Purchasing books, reports and advance sheets used in activities or for purposes other than negotiating collective bargaining agreements and processing grievances.

17. Paying technicians in labor law, economics and other subjects for services used in activities other than negotiating, implementing and administering collective bargaining agreements and processing grievances.

18. Supporting and paying affiliation fees to other labor organizations which do not negotiate a collective bargaining agreement governing the fair share fee payer's employment.

19. Membership meetings and conventions held for purposes other than to determine the positions of employees on collective bargaining issues, contract grievance adjustment or other matters affecting wages, hours and working conditions.

20. Internal communications which concern subjects other than collective bargaining issues, contract administration, public employment and generally employee development, unemployment, job opportunities, award programs or other matters affecting wages, hours and working conditions.

21. Prosecution or defense of arbitration, litigation or charges involving matters other than the ratification interpretation, implementation or enforcement of collective bargaining agreement, or which relates to the maintenance of the union's association or corporate existence.

22. Lobbying for purposes other than the negotiations, ratification or implementation of a collective bargaining agreement.

23. Social and recreational activities.

24. Payments for insurance, medical care, retirement, disability, death and related benefit plans for union employees, staff and officers.

25. Administrative activities and expenses allocable to Teamsters' activities and expense for which fair share fee payers are charged.

The fair share fee does not include any expense for the following activities:

26. Training and voter registration, get-out-the-vote, and political campaign techniques.

27. Supporting and contributing to charitable organizations.

28. Supporting and contributing to political organizations and candidates for public office.

29. Supporting and contributing to Ideological causes.

30. Supporting and contributing to international affairs.

31. The public advertising of Teamsters position on issues other than negotiations, ratification, or implementation of a collective bargaining agreement.

32. Member-only benefits.

33. Organizing expenses

TEAMSTERS FAIR SHARE FEE

Applying these categories of chargeable and nonchargeable expenses to the activities and undertakings of Teamsters International, Tea msters Joint Council 25 and Teamsters Local 916 for the most recent periods for which audited financial expenses are available, it was determined that 78.78% of the expenses of the union were chargeable to fair share fee payers. Applying this percentage to the dues rate charged to Teamsters Local 916 members, which varies depending on whether the employees can strike and other concerns, a fair share fee of 78.78% of the pay of the nonmember fee was established. This fair share fee will be effective for the period beginning 1/1/2016 until 12/31/2016.

The fair share fee is based upon the audited financial information provided below. This financial information sets forth the expenditures for all three entities in major categories of expenditures audited by independent accountants. The schedules detail the portions of total audited expenditures which are chargeable to fair share fee payers.

- Teamsters Local Union No. 916 Statement of Expenses and Allocation of Expenses Between Chargeable and Non-chargeable Expenses Modified Cash Basis Year Ended December 31, 2014 (Page 4)
- Teamsters Joint Council No. 25 Statement of Expenses and Allocation of Expenses Between Chargeable and Non-chargeable Expenses

Modified Cash Basis Year Ended December 31, 2014 (Page 5)

- International Brotherhood of Teamsters Consolidated Statement of Expenses and Allocation of Expenses Between Chargeable and Non-chargeable Expenses, Revised Calculation Year Ended December 31, 2013 (Page 6)

PROCEDURE FOR CHALLENGING THE FAIR SHARE FEE

Teamsters Local 916 has established the following procedure for individual fair share fee payers who wish to challenge the foregoing calculation and the amount of the fair share fee. Please Read This Carefully. You Must Comply With These Procedures In Order To Challenge The Fair Share Fee.

EMPLOYEES SUBJECT TO THE ILLINOIS PUBLIC LABOR RELATIONS ACT

Individual non-member fair share fee payers who are subject to the Illinois Public Relations Act who wish to challenge the calculation of chargeable expenses and the amount of the fair share fee set forth in this Notice must do so individually and in writing. The written challenge must include the challenger's name, address, social security number, job title, employer, employing agency or department and work location.

The written challenge must be sent to Teamsters Local 916 by mail, post marked no later than 45 days from the date of this notice to the following address:

Fair Share Challenge
c/o J.P. Fyans
Teamsters Local 916
3361 Teamster Way
Springfield, IL 62707

Teamsters 916 has an established an arbitration procedure for resolving challenges to the calculation and the amount of the fair share fee. This procedure will result in an expeditious decision on the challenge by an Impartial decision maker. The decision maker will be an arbitrator selected by the American Arbitration Associatiorf pursuant to the Rules of the American Arbitration Association governing fair share cases. The union will have the burden of proving that the fair share fee is proper. Challengers will have a chance to appear before the arbitrator to state their objections to the fair share fee. The arbitrator will issue a decision regarding challenges to the calculation and the amount of the fair share fee ninety (90) days after submission of final argument regarding the amount of the fee. Challengers will receive Information regarding the procedure upon the union's receipt of their challenge.

EMPLOYEES SUBJECT TO THE ILLINOIS EDUCATIONAL LABOR RELATIONS ACT

Individual non-member fair share fee payers who are subject to the Illinois Educational Labor Relations Act (IELRA) have the right to object to the amount of the fee by filing an objection with the Illinois Educational Labor Relations Board (IELRB). Under this procedure, an objection must be filed no later than six (6) months after the first payroll deduction of the fair share fee. The objection shall be on a form developed by the IELRB and shall contain the following Information: the name, address and telephone number of the employee filing the objection; the name address and telephone number of the exclusive representative; the name address and telephone number of the employer; the amount of the fair share

fee certified by the exclusive representative; and the amount disputed by the employee.

The IELRB shall investigate and process all fair share fee objections and shall issue complaints or dismiss objections. Hearings on fair share fee objections shall proceed before an administrative law judge who will render a Recommended Decision and Order. The burden of proof shall be on the exclusive representative. The hearing will commence no later than sixty (60) from the last date of filing and objection. A Recommended Decision and Order shall be issued within sixty (60) days after the close of the record. A Recommended Decision and Order or summary of the Recommended Decision and Order shall be served on all parties to the proceeding. Exceptions may be filed to the Recommended Decision and Order pursuant to the rules and regulations adopted by the IELRB. Further information may be obtained from the IELRB at 160 N. LaSalle Street, Suite N400, Chicago, IL 60601.

ESCROW OF FAIR SHARE FEES

Upon receipt of a written challenge, Teamsters Local 916 will deposit, in an Interest bearing escrow account, 100% of the fair share fees paid by the challenger pending resolution of their challenge. The fair share fee shall remain In escrow until the arbitration award or a decision by the IELRB issues and shall be distributed along with accrued Interest, pursuant to the arbitrator's ruling and Illinois law.

RELIGIOUS OBJECTION

Fair share fee payers who object to payment of fair share fees because of bona fide religious tenets or teaching of a church or a religious body of which said fee payer is a member, may pay an amount equal to

their fair share fee to a non-religious charitable organization as provided under the Illinois Public Labor Relations Act and the Illinois Educational Labor Relations Act. Contact IELRB or ILRB at the above address or LP. Fyans at Teamsters Local 916, 3361 Teamster Way Springfield, IL 62707 for details concerning this procedure.